Acta Sanctae Sedis

Acts of the Holy See

Holy See; Vatican

An English translation of the Latin edition
Rome: Typis Polyglottis Vaticanis, Vol. 17 (1884)

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[*Latin ed. p. 1*]

THE ACTS OF THE HOLY SEE, CONCISELY COMPILED AND ILLUSTRATED WITH CARE BY JOSEPH PENNACCHI AND VICTOR PIZZESI.

Legal and more solemn acts emanating directly from the Supreme Roman Pontiff: these are acts which, among those that can be made public under the law, are either Decrees, or Instructions, or Responses, and the like; especially, expositions and resolutions of cases from various Eminences, Cardinals, in the Sacred Congregations, carefully compiled to promote a thorough understanding and observance of ecclesiastical law; and finally, other legal matters, which are appropriately illustrated, either because they may present a difficulty in the aforementioned acts, or because they contribute further to the knowledge of existing law: all for the benefit of those who diligently seek to understand the laws of the Church, and who labor zealously in the governance of the Christian flock, or in maintaining the Lord's vineyard.

ROME, AT THE POLYGLOT PRINTING OFFICE OF THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, MDCCCCLXXXIV.

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[*Latin ed. p. 3*]

3. FROM THE CONGREGATION OF THE COUNCIL OF SEJNY. CONCERNING MARRIAGE. February 16, 1884. SUMMARY OF THE CASE. In the parish church of Szumsk, in the diocese of Sejny, or Augustów, on February 11, 1872, the young woman Anna Sluzynska, aged 18, celebrated her marriage with Sigismund Akerman, aged 32, a widower, who had conceived a child from a five-year relationship with another woman. After barely six years of marriage, the wife returned to her parents' home, and did not return to her husband. Indeed, on February 22, 1881, she accused her husband of impotence before the Episcopal Curia of Sejny, and requested the annulment of the marriage. Therefore, after the woman underwent a judicial examination, having taken an oath, she testified that, without delay from the celebration of the marriage, she had lived with her husband, and had used the marriage bed; and that for two years she had lived with him in the town of Kybarty, and had, almost every day, engaged in the consummation of the marriage; afterwards,

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when they moved to Suwalki, although she was often left alone by her aforementioned husband, who frequently returned to his former home, she repeatedly attempted to consummate the marriage; however, all her efforts were in vain, and her husband was never able to insert his virile member into the wife's genitals, nor to complete the act of penetration: and if he did shed any seed, it remained outside the woman's womb, therefore, her marriage is invalid, null and void, from the husband's impotence. The husband, in turn, also testified under oath, stating that he had lived with his wife from the beginning of their marriage, and that she...

[*Latin ed. p. 4*]

4. SEINEN. As he had previously learned, his deceased wife, from whom he had offspring, had experienced a perfect and complete marital union without any difficulty for a full five years, and almost daily, except for cases in which she was prevented by illness, and that he had sufficiently erected his own member and had penetrated her womb, scattering semen within, and consequently, the marriage contracted and consummated by him could in no way be subject to nullity. In this dispute between the parties, the Curia of Seiriensis, by a decree of April 8th of that same year, ordered that both the man and the woman be subjected to a physical examination, to be carried out by experts in the art. Hence, three midwives, with the assistance of a matron, came to examine the woman's genitals, after she had been given a bath of one quadrant, each individually, and separately, one after the other, and under oath, they reported that they found the labia majora and minora to be firm, of a red color, and tightly closed, as were the walls of the vagina, smooth and with no folds adhering to each other, and that the hymen was a round, thin, and delicate membrane, the opening of the vagina being very narrow, and therefore, she undoubtedly and certainly remained in the state of her perfect virginity. Two physicians also, under oath, testified that the examination had been properly and sufficiently carried out by the midwives, and that, based on their report, they believed that Anne had, without doubt and certainly, preserved the flower of her virgin modesty until that time. However, since Sigismund stubbornly refused to submit to a visual examination, the same Curia, by another decree of September 22nd of the same year, ordered the parties in dispute to take a substitute oath, which would be corroborated by the testimony of seven witnesses and neighbors. To support this decree, the woman presented fourteen individuals, whether relatives or affine, who all, except for three who did not recognize the woman, affirmed that they fully believed her in all that she had stated in this case. As for the man, considering his manner of acting, as the records of the documents show,

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he was...

[*Latin ed. p. 5*]

SEJNY. On the fifth day, [the matter] remained unresolved, and no progress was made towards establishing the truth. After these events, a woman swore an oath regarding the truth of all that she had presented, and on November 5th, the aforementioned court rendered its final judgment, declaring the marriage of Anne to Sigismund to be null and void, since it was contracted with the impediment of impotence. When this judgment was made known to Sigismund, he appealed to the metropolitan consistory of Warsaw, stating that, not out of defiance but due to illness, he had been unable to appear before the court of Sejny, and presenting the testimony of a local physician; therefore, he earnestly requested that an in-person examination of his person be ordered. Consequently, after the revision and appeal interposed by the defender of the marriage, the judgment of the court of Sejny was brought before the consistory of Warsaw. On March 27, 1882, after considering the testimony presented by the man, who declared himself willing to undergo examination, and after considering that, in the initial instance of the trial, the determination of nullity had been based solely on the examination of the woman, and that the order of instructions of the Sacred Congregation of 1840 had not been fully observed, it declared the judgment of the court of Sejny to be invalid. The woman felt aggrieved by this decision, and, having obtained the promise of certain members of the consistory of Warsaw that this judgment could be reformed, provided that the lack of an in-person examination of the man be remedied by a medical examination, and that the testimonies of these physicians be appended to the records of the case, she petitioned the court of Sejny on April 17th of the same year, requesting that the man be subjected to a medical examination. The court, agreeing to such a request, ordered the examination of the man. After this examination was completed, three physicians, under oath, testified that Sigismund's male member was moderately developed, small, soft, and that it produced no irritation or change, that his testicles were small and soft, and, in short, that he was truly impotent for carnal intercourse, and that this condition had persisted for several years; and that this impotence was perhaps caused by abuse of venery.

[*Latin ed. p. 6*]

6. SEINEN. In adolescence, or from another illness. Furthermore, the age of this man, "since he is already more than forty years old, makes this defect very difficult, if not impossible, to cure." Moreover, documents were sent to the Consistory of Warsaw, along with the testimonies of doctors, and on June 17, 1882, it decreed "that it had fulfilled its duty in this matter, and that it stood by its decision." The woman did not agree with this decree,

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and appealed to the Holy See, so that the case might be considered a third time. Hence, from the testimony of the Diocesan Ordinary concerning the woman's poverty, and his recommendation, the case is now presented for economic consideration, along with the opinion of a theologian and canonist, as well as the observations of the Defender of the Bond, by virtue of his office; of which we offer a synopsis.

SYNOPTIC DISCUSSION

OPINION OF THE THEOLOGIAN. The theologian laments that a case of such importance was treated lightly by the Diocesan court: indeed, the greatest diligence should be applied in examining the testimonies of both the parties in dispute, as well as the witnesses and doctors, and also of experienced matrons. The proper judicial form in cases to be considered provides the means by which the truth is revealed and justice is strengthened. Therefore, if the essential procedure is neglected, the judgment of the ordinary judge is invalid, according to the law. In this regard, the Consultant stated that, since many things were lacking that should have been done, the present case seemed difficult to him, both due to the complexity of the circumstances and the inadequacy of the process; and therefore, with a sense of suspicion, he considered that the documents should be examined more carefully, and that the omissions should be interpreted with a stricter hand. And indeed, both the introductory document of the case, as well as the testimony of the woman, induce suspicion in the mind of the reader. And the final part of the testimony of the husband increases this suspicion even more. The woman speaks of the vexations she has suffered, of the prolonged absence of her husband, and then of an impediment to the potency of her husband; so that rather secondary causes appear to be the principal ones.

[*Latin ed. p. 7*]

SECTION 7 concerns the separation that is requested. The husband recounts that his wife had an improper communication with a certain doctor, and this raises suspicion, both with regard to the woman's claims, and with regard to the testimonies of doctors and expert women. The ordinary judge was obligated to investigate more thoroughly, keeping these serious circumstances in mind. Furthermore, the woman contradicts herself: for she states that her husband has been absent for five years; and yet, she claims to have had marital relations with him for an entire year. In her deposition, she states that from the beginning of the marriage, she spoke with her husband about seeking a divorce; to which the husband responded by consenting. However, in the same deposition, the woman states: "At the beginning, I did not know whether my marriage could be annulled." In the introductory document, she states that she left her hus-

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band, and in her deposition, she states that her husband left her. In law, the Consultor states, the most certain argument must be sought, especially in matters of marriage; but can a contradiction not be a valid argument? Furthermore, the Diocesan court summoned the husband for a physical examination, but he excused himself, citing a cause of infirmity. Therefore, why did the Episcopal court declare the husband contumacious? Was he contumacious because he requested a delay? Moreover, the judgment was rendered solely on the examination of the woman; and without the husband being examined, it was declared that the husband's impotence was absolute, permanent, and pre-existing. But how could the diocesan judge simply and absolutely render a judgment without the opinion of an expert, who would have testified about the true impotence of the husband, after a prior physical examination? The witnesses brought forth by the woman alone were not unanimous in their testimony; for before the woman left her husband, they were ignorant of the true cause of the separation; and among them, some mentioned one cause, while others mentioned another. The mother and sister of Anne were unaware of the true cause of the division. The witnesses brought forth by the woman testified against the husband, accusing him of being addicted to card games; but what is the connection between this and the impediment of impotence? However, by comparing the confessions of the spouses, some things become clear.

[*Latin ed. p. 8*]

8. HE TESTIFIED: that depositions agree that the man sowed, that he was affected by a disease, from which it is to be doubted whether impotence has its origin; that the woman was never complaining of the marital duty not being consummated; that the husband introduced his fingers into the woman's vagina. From this, it is deduced that the man, with the woman acquiescing, consummated the act and shed his seed between her thighs. Just as the act of the man between the woman's thighs and the touch of betrothed persons do not destroy the woman's virginity, so neither can impotence be said to be antecedent and absolute. However, if the man's disease progressed from the manner in which the spouses delighted in each other, then, with this manner ceasing, the disease will also cease. The woman testified that the man had fallen into hypochondria because he did not have the strength for perfect copulation; but the hypochondria appeared about two years later. Therefore, there was a cause of the impotence in the very marriage, and an effect, namely, the hypochondria. The man testified that the woman fostered sympathy for a certain doctor; who would marry her if she obtained a divorce. From this testimony, doubts are raised, as anyone can see, and a presumption, as Sánchez says in book of disputations, 103, number 9, stands in favor of the man: for since nature produced this man as potent, the burden of proof lies on the one asserting that he was ever impotent. This presumption is especially strong when the spouse began to

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complain of the other's impotence long after the marriage contract; if she wanted to complain, why did she remain silent for so long? For she could have known quickly, within a short time, whether he was able to shed his seed. Speaking of the examination of the woman's body, the Consultant said that this was of little benefit; because virginity can remain with an imperfect copulation. For, as many among the more recent writers teach, the seed can enter through the menstrual passage, and a woman who is not sterile can become pregnant, and yet retain all the signs of virginity until childbirth. The first doctor who examined the man said that he found him impotent for coition and procreation. This infirmity, deriving from sexual abuse, has lasted for several years in his youth, and is quite incurable.

[*Latin ed. p. 9*]

9. The second physician stated that the man possessed small genitalia in relation to his entire body; these did not appear to have sufficient power. From this, it can be argued that the man is impotent, and that this condition has persisted for several years, but it is impossible to determine whether he has always been impotent, and whether medicine can provide remedies to strengthen his genitalia. The third physician, after a careful examination of the man, concluded that he too was impotent, because this impotence has lasted for several years; and he believed that his condition could not be remedied by medical treatments. However, all the witnesses agree that the impotence has existed for several years; therefore, it can be said that its origin is due to some factor present in the marriage, since in his first marriage he fathered children. And it is true that the man has declared that he, during the present marriage, has sometimes been unable to have intercourse due to illness. All agree that the cure is difficult, but not impossible. Now, true impotence in a man is said to exist when it is in no way possible to have generation, which is the substantial end of marriage; but not when the man has the power to expel the seminal substance, and from his intercourse, although with difficulty, generation may follow. For it is now accepted among physicians that it is not necessary for the man's semen to enter the woman's vessel, but it is sufficient if it is discharged near the mouth or the entrance of the vagina.

OPINION OF A CANONIST. The Supreme Pontiff could remedy any defects in the process in this case, said the Consultant, because the diocesan court had not compiled it in all respects according to the norms of the holy canons. But a great difficulty arises in determining whether the evidence collected by the court is truly that which demonstrates that the marriage is invalid and null due to the man's impotence, as the same court has pronounced. Theologians and Canonists all demand clear and convincing evidence that can produce moral certainty, when it is a question of the dissolubility of a bond. Concerning this, Schmalzgrueber, Vol. 4, ed. rom., part. 2, title 15, no. 70, states: "But because of the difficulty of the matter,

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one must proceed to..."

[*Latin ed. p. 10*]

10. Concerning the dissolution of marriage due to impotence, the judge must proceed with the utmost circumspection; he must not simply believe the assertions of both spouses, but rather, he must only grant the dissolution after obtaining full proof of the man's impotence. Sánchez states this in book 7 on Marriage, section 407, number 1. With these considerations in mind, the Consultant examined the evidence that had been gathered to prove the man's impotence. To accomplish this, he said, the evidence can be reduced to two main points: the woman's testimony, confirmed by an oath sworn with the laying on of hands; and the examination of the woman's body performed by midwives. However, the Consultant noted that the woman's testimony is diametrically opposed to the husband's testimony, both regarding the consummation of the marriage and regarding marital relations. The woman states that the marriage was never consummated due to the lack of erection; the husband, on the other hand, claims that he was able to properly consummate the marriage, except for certain periods of severe illness. Whom should one believe? Sánchez, in his book 7 on Marriage, section 109, number 9, states: "Furthermore, one should believe the man who claims to have had intercourse, even if the woman denies it, as long as the signs are only doubtful and ambiguous, and do not definitively indicate impotence; and in either case, the value of the marriage must be considered." But in our case, was the man certainly impotent, or only possibly so? The records show that the man had another wife from whom he had children. Therefore, if impotence was present, it was not a natural impotence, but a relative one, stemming from a weakness. However, Schmalzgrueber and others state that when it is doubtful whether the impotence preceded or followed the marriage, it is presumed that the natural impotence preceded the marriage; while an accidental impotence followed it. The fact that the man's impotence in this case followed the marriage is confirmed by the woman's long silence; for she did not regularly complain for nine years. Sánchez, in his book 7 on Marriage, section 109, number 2, states: "When the woman admits to an impediment and the man denies it, she is not, from the beginning..."

[*Latin ed. p. 11*]

"He declared it, and the one who proclaims against marriage is to be heard in no wise." The seventh witness adds little to the proof; for first, from the acts, it is not known who these fourteen witnesses are; and concerning them, the one who expanded the statement speaks only. And if, besides the testimony concerning credibility, they have testified about the impotence of the man, this is not to be considered, because knowledge of this would have come to them too late. Concerning the proof derived from

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the examination of the woman, the Consultant said: "When this proof is complete and, in every respect, is without doubt, it has the greatest power to demonstrate the truth." But not all the precautions prescribed by the Instruction of the Holy Congregation, No. 1840, were observed: for it prescribes that the woman must remain in the bath for at least three quarters of an hour, while in this case, the woman remained in the bath for only one quarter of an hour. One of the midwives said: "I observed the entrance to the vagina to be narrow, the walls of it close together." This particular feature is taken as an indication of virginity; but Zacchias, *Quaestiones Medico-Legales*, book 4, title 1, No. 12, states: "Furthermore, Avicenna, in book 1 of *Colligations*, chapter last, says that the orifice of the vulva is crisp in a virgin, but in others, because the wrinkles are flattened by intercourse, it is more loose and flat, but this sign does not appear except when intercourse has been frequently repeated, so that it will scarcely appear in one who has had only one union." Therefore, it seems rather to be deduced from this sign that the marriage about which we are speaking has been consummated several times. Regarding the other signs that the midwives found, the Consultant observed that these, too, can be repaired in a woman who has abstained from carnal commerce for some time. The existence of the hymen, asserted by the midwives, is of great importance among canonists; but one of them sufficiently demonstrated that she was not sufficiently skilled in this matter. And furthermore, Zacchias, book 4, title, question 1, Nos. 28 to 31, teaches that the hymen can remain intact even when the woman is corrupted, especially "if..."

[*Latin ed. p. 12*]

12. CONCERNING IMPOTENCE. "If the virility is weak in a man, the hymen's opening is more spacious; for without the tearing of the hymen, a woman can be corrupted and conceive." In this case, the consummation of the marriage may have taken place without the breaking of the hymen; as the visiting physicians reported that the man's penis was insufficiently developed. The Consultor then, speaking of the examination of the man's body, said: all the witnesses agree that they found him to be impotent; but it cannot be determined from what time he has been impotent. Therefore, it is also unknown whether the impotence preceded or followed the marriage, and therefore the essential requirement, or proof, that the impotence was present before the marriage, in order that it may invalidate the marriage, is also lacking. Indeed, as stated above, in our case, it is presumed by law that the impotence followed the marriage. Furthermore, from the report of the physicians, the curability or incurability of the impotence in question remains unknown. Hence, the other essential element is also lacking, namely, that it can be declared incurable in order to invalidate the marriage. But for the validity of the marriage, it suffices that the power of intercourse is not destroyed; according to Schmalzgrueber, part 3, title 15, number 36.

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Therefore, the testimonies of the physicians are not sufficient to prove the man's impotence, even if the man was examined ten years after the marriage contract. And therefore, since in our case the full proof of impotence is lacking, it would seem better to maintain the validity of the marriage rather than declare it null. However, since there is no moral certainty of the non-consummation of the marriage, therefore, it is not possible to proceed in our case through the way of grace, but rather to consult the Most Holy Father for a dispensation from a marriage that is not consummated. Finally, the Consultor noted that sometimes one or both spouses may commit deceptions regarding the impediment of impotence, in order to be able to enter into other marriages. In our case, the man testified that the woman seems to be in love with another man, who would take her as his wife if a sentence of nullity were obtained.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE. He nodded.

[*Latin ed. p. 13*]

SECTION. 13. It has not been established that the process of the diocesan court was conducted according to the prescribed canons; whereas the Church, the Mother, considers the dissolution of marriage to be a matter of great importance. Therefore, certain precautions, laws, and formalities must be observed in matrimonial cases, under penalty of nullity of the process, if they are neglected. However, in this case, many things were neglected, which entirely prevent the acceptance of the woman's petition. For, aside from other omissions, the seventh degree of kinship is lacking; and we only know, from the Bishop's report, that the woman presented fourteen relatives or affine. But why were these witnesses not questioned in Fermo, and why was no oath administered to them? Furthermore, the woman testified that the man used various medicines under the advice of experts; the man denied this. Common prudence demanded that these experts be called and examined in order to ascertain the truth. Nor was the woman's mother questioned about her relationship with the doctor, which was known to her. Moreover, a fault was committed in investigating the woman's integrity; it appears that there was a deliberate intention to violate the Instruction of the Council. A matron should be appointed by the judge; in this case, not the judge, but the woman herself chose the matron; a fault was also committed in the examination of the doctors who examined the man's body. For, while they should have been questioned by the defender of the marriage, this was omitted, and it was left to the doctors to relate whatever they themselves deemed best. But did matters proceed better internally? The defender of the marriage left this province, leaving behind consultants who completely rejected the nullity of the marriage; and their opinions were entirely followed by the defender of the marriage. With these observations, the purpose was to determine whether the judgment of the

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Metropolitan Court of Warsaw should be confirmed or rejected in this case. RESOLUTION. After discussion on February 16, 1884, the Sacred Council decided to respond:

[*Latin ed. p. 14*]

14. CONCERNING THE NULLITY OF MARRIAGE. It does not follow that a marriage is null simply because of certain circumstances. From these, one may gather the following:

I. The ordinary judge must exercise the utmost circumspection when dealing with cases involving the dissolution of marriage based on the grounds of impotence, in order to avoid fraud and collusion on the part of the spouses; for they often, through mutual agreement, seek a solution to transition to other marriages.

II. No fault should be found with the judge for diligently investigating the truth and seeking evidence regarding impotence, since the dissolution of a marriage is a very serious matter, and the salvation of souls may be at stake, whether in dissolving a valid marriage or in validating an invalid one.

III. Regarding the value of a marriage, if a husband who is doubtfully impotent asserts that he has had complete intercourse, and the wife denies it, then the husband's testimony should be given more weight, provided that there are no certain signs of impotence, but only doubtful and ambiguous ones.

IV. Natural impotence precedes marriage, while accidental impotence follows marriage; for it is presumed that natural impotence existed before the marriage, because a quality inherent in nature always remains; whereas, accidental impotence is presumed to have arisen after the marriage, because nature produces the power, and the one who asserts that another is impotent bears the burden of proving it legally.

V. If the husband's impotence arose after the marriage, beyond the presumption of the law, the wife's prolonged silence should be considered as evidence; for she complained many years later.

VI. A wife who proclaims her opposition to the marriage not from the beginning, but later, should be given very little consideration, even if she admits to an impediment, which the husband denies.

VII. However, the proof of nullity carries great weight if the wife demonstrates, through her appearance, that she has not been known by her husband; for in such cases, the wife's denial of intercourse is more likely to be believed than the husband's affirmation, especially when other women observe the situation. And a woman who is proven to have been a virgin and to have remained a virgin, even many years after the marriage, can validly object.

VIII. The proof of virginity in a case must be complete and beyond doubt

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in every respect; otherwise, it is considered invalid, even if the form was omitted.

[*Latin ed. p. 15*]

SECTION 15 concerns legal matters, and also those arising from a lack of due expertise in married women: and it is indeed certain that the "impotence of the man" precedes the marriage. I X. Therefore, the Sacred Congregation acted most prudently in not declaring the marriage valid, but rather in indicating that sufficient proofs are lacking, which may otherwise be presented, so that no marriage can be declared valid in this case. ANDRIA. CONCERNING FUNERALS AND BURIALS. On March 3, 1884. Andria, a city of approximately 40,000 inhabitants, formerly comprised a single parish, in which the Cathedral Chapter exercised the pastoral care of souls, and from two other city Chapters, namely those of the Annunciation and of St. Nicholas, the latter having a subsidiary role in the parochial ministry. Furthermore, at that time, while the care of souls was thus managed, a particular custom regarding funerals developed. This is asserted by the Cathedral Chapter, with the approval of the Bishop, namely that almost all the citizens were attached to some pious confraternity; and if one of them were to die, the family would not usually take the initiative to arrange the funeral ceremony, but would rather entrust this task to a large extent to that confraternity to which the deceased was attached in life. The confraternities were mostly located in the Cathedral, others in one or the other of the Collegiate churches, and some were also located in the churches of the ancient monasteries, which had already been suppressed since 1809. Furthermore, it is said that very few of those residing in the Cathedral or in one of the Collegiate churches had, from ancient times, been related to their Chapter in this matter concerning funerals, so that, for example, the confraternity would invite its Chapter, and would pay it sums of 25 or 50 livres; and the Chapter would then take charge of the deceased's body, carrying it through the streets. SUMMARY OF THE FACTS.

[*Latin ed. p. 16*]

16. ANDRIEN. The funeral Mass should be celebrated, and twelve candles should be placed around the tomb, lit during the funeral. This rule does not apply to the two confraternities of the Altar of the Suffering Virgin and to all those confraternities which were formerly established in the Convent and suppressed in the year 1809. Furthermore, the actual care of souls was exercised by the Chapter of the Cathedral; the economist of that Chapter, wearing his stole, preceded the Chapter, conferred absolution over the coffin, and demanded the customary fees; but the economist did not celebrate Mass, nor did he collect alms for this purpose, because, as stated in the aforementioned agreement, it was the duty of the Chapter to celebrate the Mass for the deceased. In the year 1852, the city was divided

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into six parishes, and the new pastors observed the established custom of funerals from the beginning, without objecting to anything; but rather, content with the right to succeed to the office of the former economists in this matter, they allowed the Chapter to celebrate Mass without objection. However, in the year 1881, an opportunity arose for the pastors to oppose this unusual practice. The Sodality of St. Monica, established in the church of St. Augustine (where the Chapter of the Annunciation also resides, and where a parish was established in the year 1857), not only invited the Chapter of its own church to the funeral, but also the Chapter of the Cathedral, perhaps because the Chapter of the Annunciation was greatly diminished by the circumstances of the times. The invited Chapter attended, collected the alms, and, according to the established custom, celebrated the Mass for the repose of the soul over the coffin. The pastor, who did not want to invite the Chapter of the Cathedral, and was therefore excluded both from celebrating Mass and from receiving the more substantial alms, immediately protested to the Sodality and the Canons that his rights were being violated; and he then filed an appeal with the Curia, and later, together with three other pastors of the city, he presented a case to the Sacred Congregation for the Clergy, which vigorously condemned the solution to several doubts. However, these doubts were dismissed after various vicissitudes, with the exception of one: "when bodies are brought to parish churches, even by the clergy of the Cathedral."

[*Latin ed. p. 17*]

ANDRIEN. "17. Estne licitum parochis assignare unam horam pro curandis affictis?" De aliis dubiis, Capitulum Cathedralis affirmavit se non volere dare sententiam, propter desiderium pacis et ut vitentur contentiones. Disceptatio Synoptica. Favore parochorum, notatum est quod haec intentio, quae ad funera parochianorum pertinet, fundatur in iure; *Maschat de sepulturis, q. 5, n. 12*. Omnis fidelis, nisi quid impediat, debet aput illam ecclesiam sepelli, ubi in vita sacramenta suscepit, scilicet in parochiali; *Ferraris, v. Sepultura, n. 20*; ideoque ius funeris vulgo dicitur ius parochiale, *Barbosa de officis et potestate parochiali, c. 26, n. 20*; et hoc praesertim refertur ad translationem cadaveris. Nemo enim corpus de domo transferre potest iure, sine consentiendo vel absente parocho, cui semper ius est cadaveri benedictendi, et antiphonam *Exultabunt* incipendi. Ita ut corpus defuncti, qui quidem sepulturam apud regulares elegerit, regulares numquam corpus levare et ad suas ecclesias transferre possint, sine requisitione et praesentia parochi, nisi solum si parochus requisitus recusaret consentire vel venire. Hoc post Constitutionem X Concilii Lateranensis, omnes doctores unanimes docent, praesertim *Reiffenstuel, tit. de sepulturis, n. 34; Barbosa, loc. cit., n. 66; Ferraris, loc. cit.*. Et in Callien, die 20 Decembris 1828, proposito dubio: "An et ad quem pertineat ius transferendi stolem, aspergentis cadavera aqua benedicta, et

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incipendi antiphonam *Exultabunt* in funeribus Canonicorum Ecclesiae Cathedralis, in casu?", Sacra Congregatio respondit: "Affirmativum ad parochum defunctorum." IURA PAROCHIALIA. Si ergo agere funus, et praesertim transferre corpus de domo, pertinet ad iura parochialia, congruens videtur esse, ut parochus definat horam ad exercendum hoc iure; non quidem ut hoc iure abuseretur, sed ut quod optimum sit consulat, et conveniat cum familia, et aliis circumstantiis. *Acta, Tom. XVII, fase. OXCIII, 2*.

[*Latin ed. p. 18*]

18. ANDRIEN: [The parish priest] should be attended by those who are invited; but not in such a way that the will of those invited is necessarily forced, nor should he appear as their servant. For it does not seem just that anyone, in the exercise of their own rights, should be burdened or hindered by an outsider. He may even be accused of such conduct. Indeed, as is well known, it pertains to the parish priest to determine the manner in which the body is transported; Vecchiotti, *lib. 2*, chapter 5, section 62. Furthermore, just as the parish priest cannot excessively or abusively insist on his own will in the exercise of his rights, so too he is not obliged to impose the will of others, especially those who have been invited, but rather to consider their convenience. In general, it seems that the rights of parish priests, called to the service of pastoral care, are best protected and exercised freely, so that their exercise may more readily serve the good and benefit of the faithful. Moreover, the parish priests state that the canons sometimes request a specific hour [for services], so that it may be possible for them to dedicate themselves to choral office and to attend to a greater number of funerals on a given day. This, however, often happens to the admiration of the people; for it is not uncommon that a small number of canons are present in the choir, due to the early hour of the choral offices, and because of the many funerals to which all the canons strive to attend. It is true, however, that the canons are sometimes detained by other necessary duties; but, according to the parish priests, this would mean nothing more than that the cathedral clergy would be absent from those funerals to which, after all considerations, they cannot attend. This, they affirm, would not be a grave evil, certainly not as great as if the service of the canons were to be made to yield to everything. Finally, the parish priests state that the canons do not usually intervene in a way that is detrimental to the canons themselves. Indeed, if the canons obtain any honor or precedence at funerals, it is only when they themselves participate in a chapter capacity; Ferraris, *v. Crux*, numbers 14, 15; Barbosa, *Summa Apostolica*, volume on Precedence, number 1; and other Doctors, throughout.

THE RIGHTS OF THE CHAPTER. On the other hand, it is important to remember that the honor and dignity of the chapter must also be considered, even at funerals. For those who participate in a chapter capacity are

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more honorable.

[*Latin ed. p. 19*]

ANDRIA. The matter is reserved; indeed, although the parish priest may perform the entire sacred function, as cited by Callien, Ferraris I, chapter 1, Vecchiotti, op. cit.; nevertheless, in the procession, a place near the cadaver is left for the Chapter, as if it were more fitting. Similarly, although the cross of the church to which the body is being carried should be raised during the procession along the streets, nevertheless, in the presence of the Chapter of the Cathedral, all should walk beneath its cross; Monacelli I, 1, letter 5, form 6, number 37; Ferraris, see "Crux," number 14; Alatrina, "Concerning the carrying of the cross and precedence," April 22, 1882, §. Therefore, it will not be out of place to defer to the canonical honor in this matter as well, and to leave the designation of the hour to the Chapter, as the Ordinary seems to believe. And even more so, because by granting the wishes of the parish priests, the Chapter might often be unable to attend funerals. This, according to the Bishop of Andria, would be the cause of a double evil; first, with regard to the Canons, who, not being richly endowed, would suffer a new expense from the omission of funerals; and second, with regard to the people, for whose benefit the intervention of the Chapter in the funeral procession is very important, and who would see the deceased carried away without the usual solemnity with indignation and scandal. With these things noted, the purpose was to examine the question of whether and how provision should be made regarding the designation of the hour.

RESOLUTION. The Sacred Congregation, having considered the matter, decided on March 8, 1884, to respond: Affirmatively, in favor of the parish priests; however, the parish priests should take care to consult, as far as possible, the convenience of the Chapter.

FROM WHICH WE GATHER:

I. That parish priests have a well-founded intention in law regarding the funerals of their parishioners; so that, in the absence or unavailability of the parish priest, no body can be carried away.

II. That when parochial rights are involved, the right to conduct the funeral and to carry the cadaver from the house is not to be disregarded.

[*Latin ed. p. 20*]

20. ANDRIEN. A valuable reason, by which it should be denied to parish priests even the right to determine the hour for the removal of corpses and the celebration of funerals. III. The custom of the Canons accompanying corpses is generated by customary law in the diocese; however, it has not been proven that such a custom can be upheld by the requirements by

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which the rights of parish priests are prescribed.

Pavia. EDICT OF EXEMPTION. March 8, 1884. SUMMARY OF FACTS. There exists in Pavia a college founded by St. Charles Borromeo to receive and provide free lodging and board to poor young men who devote themselves to the study of sciences at the University. For the proper administration of the aforementioned college, the patronage of which is reserved to the Borromeo family, certain Constitutions were drawn up by a certain Ludovico Moneta, at the mandate of the aforementioned St. Founder, and according to his mind and will, and were subsequently approved by the Supreme Pontiffs Sixtus V and Paul V in the years 1587 and 1610. In these, the following are stated: "Since this college, from the very beginning, has been founded with the most holy authority of the Apostolic See, and with ecclesiastical funds, and is also established with an ecclesiastical endowment, and is endowed with goods of the same kind, and moreover, benefits are also reserved to the Apostolic See, it has grown remarkably, and therefore, by the best right, it is free, immune, and exempt from any visitation, correction, or amendment by the Ordinary, and is entirely subject only to the aforementioned Apostolic See, to which, as it acknowledges now, so also in the future, it will always be subject to visitation and jurisdiction." However, in the writings of two illustrious Pontiffs, the very same words are read: "And nevertheless, to our venerable brothers the Archbishop of Milan, and P-..."

[*Latin ed. p. 21*]

To the Bishops of Piacenza and Lodi, We hereby commit and command that they, or two or one of them personally, or another or others, ensure that the aforementioned constitutions and ordinances are observed inviolably, by themselves or by the Administrator, Rector, and other members of the College, and by all other persons currently present, even under the censures and penalties, whether ecclesiastical or monetary, which they and each of them may impose and apply, all reclamations, appeals, or exceptions ceasing; and that those who contradict or rebel against these same constitutions and ordinances are restrained by means of the aforementioned censures and penalties, and that these censures and penalties, even repeatedly, are increased, and, if necessary, the assistance of the secular arm is invoked for this purpose.

However, it appears that the aforementioned Prelates never interfered with the College's administration, perhaps out of reverence for its Patron, who was usually a Cardinal. When the Bishop of Piacenza, a few years ago, wished to visit the College's oratory during his visitation of the diocese, he was forbidden to do so, because the College was asserted to be exempt from his jurisdiction and immediately subject to the Apostolic See. Therefore, the aforementioned Prelate approached Cardinal Edward Borromeo, the College's Patron and Administrator, to ask him to express his opin-

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ion on this matter. After setting aside the legal controversy, the Cardinal delegated the aforementioned Prelate to carry out the canonical visitation. After the death of the aforementioned Cardinal, his brother, Count Gilbert, succeeded him in the patronage of the College. Now, the Bishop, resuming his visitation of the diocese, inquired as to what grounds the College's exemption could be demonstrated, and the response was that it was shown by the words of the constitutions mentioned above. Therefore, on January 22, 1883, with reference to these S. C. C. [Sacred Congregations], the following observation was made: These constitutions are no longer observed, nor is the end that was established by S. Charles and Cardinal Frederick Borromeo being achieved, namely, that young men should be led by their example to live a truly Christian life.

[*Latin ed. p. 22*]

22. PAPIAS: Nor can we say that it is right to stir up others, when every religious duty is fulfilled in the sacred days of celebration. 2. In the records of the Supreme Pontiffs, not a single word of such an exemption can be found; indeed, it seems quite the opposite is the case. Therefore, he requested that the Holy Congregation decide on the duty incumbent upon the Bishop regarding the visitation of the oratory and the observance of the constitutions. The petitioner asked: "Since ecclesiastical authority cannot in any way intervene in the administration of the college, because that college has, in recent years, become entirely a civil institution. The constitutions, as regards their end and essentials, are sufficiently observed, although they have been modified according to the needs of the society, which has progressed over three centuries. Finally, he stated that he would not prevent the sacred visitation of the oratory by the Ordinary." The Archbishops of Mediolanensis and Laudensis, when questioned, reported that the constitutions were observed as regards the religious education of the young, which was very dear to the heart of the Holy Founder.

A Synopsis of the Discussion. In defending the exemption from Episcopal jurisdiction, two grounds can be presented, namely, one expressly stated in the document of the Holy See, and the other presumed from long-standing possession. Indeed, it seems that the former is the primary one, and if any doubt remained, it would be completely dispelled by the latter. And certainly, there is no room for doubt regarding the expressly stated ground. For the words of the constitutions are clear, in which the college is declared to be "free, immune, and exempt from any visitation or correction by the Ordinary, and subject only to the visitation and jurisdiction of the Apostolic See..." These words completely exclude any doubt.

WHAT SUPPORTS THE EXEMPTION. Furthermore, it is clear that such constitutions possess the greatest authority in demonstrating the exemption, due to the approval of the Supreme Pontiffs. Indeed, both Sixtus V,

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who first approved them, and Paul V, who reaffirmed them from Car-

[*Latin ed. p. 23*]

On the 23rd of [month unspecified], Pope [name unspecified] confirmed certain modifications made by Frederick Borromeo, so that they were established as if, word for word, nothing essential had been omitted from them. The reason for approving these appears to be of the same weight as if a special mention had been made regarding the exemption of the College. Therefore, it necessarily follows that the College is immediately subject to the Apostolic See, and consequently, is exempt from the jurisdiction of the Bishop, even from the sacred visitation itself; Council of Trent, Session 22, Chapter 9, on Reform; Pitonius, *De controversiis patronorum*, allegation 23; Lucidi, *De visitatione sacrorum locorum*, Vol. 1, page 132, note 29. This conclusion is further confirmed by the presumed title, namely, by the three-hundred-year possession of the exemption. Such great force is inherent in this memorable possession that it grants the possessor the ability to allege whatever is possible to defend this matter or the jurisdiction that he and his predecessors have held for so long without complaint; Grat., *De jure belli et pacis*, Book 2, Chapter 4, § 7; Iiuber, *De jure civili*, Book 1, Chapter 21, §§ 14; Rota in Decreta, 87, § 12, *coram Ratio*; and in Decreta Cracovienses, Venditionis, May 15, 1762, *coram Frangipane*, § 4. Indeed, this grants a better title to the possessor in the eyes of the world; Cardinal De Luca, *De alienationibus*, Discourse 3, note 9. It is presumed that the original concession and the Apostolic privilege did not derive from mere faculty and liberality, but should be considered as arising from necessity; Rota in Decreta, 387, Part 2, note 3; and finally, no contrary proof is admitted, and it operates even against those coming with their own right; Rota in Camera, Immissionis, April 30, 1781, § 3, *coram Flanquini*. Indeed, the possession of such an exemption in this matter seems to be beyond doubt, since it is clear that, over the course of three centuries, the College has been fully exempt from any jurisdiction of the Bishop. Nor can the text in Chapter [unspecified], "Cum ex officio, de praescriptis" be objected to, where it is decided that a visitation cannot be prescribed. For this offense could easily be remedied by noting the rights.

[*Latin ed. p. 24*]

24. PAPIEN. The episcopal prescriptions are subject to the prescription mentioned in chapter "You have heard," and in chapter "As also," concerning prescriptions; therefore, the visitation can also be prescribed, since it pertains to the rights of the bishop, as stated in chapter "Concerning the office of the Ordinaries." However, when the matter is brought before the head [of the religious order], as stated in chapter "As also," concerning prescriptions, the authority of Barbosa can be invoked, who, in Alle-

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gation 129, number 9 and following, concerning the Office and Power of the Bishop, states: "A prescription that completely abolishes the visitation, commonly imposed by law, is rightly prohibited, although one is admitted that transfers it, or adds it to others, just as one is admitted that completely abolishes the visitation that is properly due by special law." Apart from the controversy regarding the exemption of the college, it naturally follows that the same privilege should extend to the oratory. And indeed, since the oratory ought to be considered as an appendage of the college, as is stated in the commonly accepted passage in Benedict XIV, book 4 of Canon Law – where it is said: "It is fitting that an appendage should participate in the same exemption as its principal" – it follows that the same should apply. It is also worth noting that the very same arguments that are used in favor of the exemption of the college also favor the exemption of the oratory; even more so, since it does not appear that the authority of the bishop intervened in its erection. However, having set aside these considerations to a certain extent, it must be noted that the oratory, which is private, and which is called "internal" by the bishop himself, and which, since it cannot have access to a public road, is clearly private. Indeed, canonists teach that a private oratory, after the first visitation, which is carried out by the bishop upon its concession and approval, can no longer be visited by right, because it is not a sacred place, nor a religious one, and, indeed, not even a pious one, as the Abbot states in chapter "Concerning the censuses," number 1; Fagnan, ibid., number 2 and 29; Cardinal Petrucci, volume 2, Commentary on Constitution 8 of Honorius III, number 58; Pignat, volume 1, consultation 93, number 24. And rightly so, since it does not appear from which chapter bishops are subject to visitation, as noted by Fagnan, in the aforementioned passage; Cardinal Petrucci, in the aforementioned passage; Ventriglia, in practice, volume 2, annotation 19, §. unico, number 19; Pignat, in the aforementioned passage, number 24 – where it is said: "For although a private oratory...

[*Latin ed. p. 25*]

PAPIEN. 25. "It happens that, when permission is first granted, the Bishop's jurisdiction to visit it does not, however, continue, since it was previously waived; therefore, in fact, it is not visited. Therefore, even according to common law, the Bishop does not seem to be bound by any obligation, nor can he carry out the visitation of the Oratory. Finally, the Prelate does not seem to be bound by any obligation regarding the enforcement of the Constitutions. Although the Roman Pontiffs entrusted this task to them, it is undoubtedly clear that they never fulfilled it, and therefore the College has always existed under the authority of an independent Administrator and Patron. Therefore, the current Patron, relying on a centuries-old prescription, can rightfully contend that that mandate has lost all force, especially since the exemption has been fully

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proven and sanctioned by the silence of so many Bishops, and therefore it could be presumed to have been revoked. Moreover, the fact that many chapters of the Constitutions are no longer observed is due to the changed nature of the College and of times. Although those who were engaged in liberal arts were admitted from the very founding of the College, as the Prelate observes, the purpose expressed in the founding documents was that the College should be, in a particular way, for those who are engaged in the study of Theology and Canon Law. Therefore, the author of the Constitutions, having this principal purpose of the College in mind, must have drawn them up in such a way as to best promote the proper formation of clerics. But now, with the study of sacred sciences completely excluded from the University, the College consists only of laymen. From this, everyone can easily see that the observance of such Constitutions can no longer be required. It is also important to consider that a studious youth, led by the desire for freedom due to the injustice of the times, can hardly submit to the discipline of Constitutions drawn up three centuries ago. To this is added the absolute opposition of the Patron, who argues that the College has become a purely civil institution and excludes any ecclesiastical authority."

[*Latin ed. p. 26*]

26 PAPAL DECREES. THOSE OPPOSED TO EXEMPTION. On the contrary, it appears that the College is subject to the ordinary jurisdiction of the Ordinary. For the matter in question is one which is most odious, and which restricts the jurisdiction of the bishop, and therefore it cannot be admitted in any way unless it is clearly and manifestly demonstrated. Indeed, the right to grant this ordinary jurisdiction over all the churches, colleges, and pious institutions within his diocese is granted to the bishop by the text in chapter 7 on the duties of the Ordinary, paragraphs 6, and by the Council of Trent, session 22, paragraphs 8 and 9. Therefore, it is argued, the bishop has an intention in law to exercise his jurisdiction, and he cannot be prohibited from doing so unless it is clearly established that the College is exempt and enjoys a privilege. For, as the text in chapter 7 on privileges teaches, in the doubt, the ordinary jurisdiction of the Ordinary prevails, as the Holy Rota teaches in decision 354, number 1, part 19, recent, and in decision 809, number 32, before Ansaldo, and generally the Sacred Congregation of the Council, as in the cases of Terracina and Sutri, Jurisdiction, December 17, 1808, and in Perugia, SS. LL., August 26, 1854. However, exemption does not seem to be proven in any way, whether by express title or by presumed title. Not by express title, because it is clear that an argument derived from constitutions is not to be held in high regard, since in the documents of the Supreme Pontiffs asserting an exemption, no explicit mention can be found; and this could not have happened if their intention had been to grant such a college a special privilege. But

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neither does it seem to be demonstrated by a presumed title, namely, by long-standing observance, which would prove that the College has been perpetually exempt from the jurisdiction of the bishop. In the first place, the Archbishop of Milan explains this very well, and when he grants this willingly, he observes: "Since, according to the aforementioned constitutions, the patron and administrator of the College should be someone from the Borromeo family, and in reality, until recent times, some Cardinal has been, it seemed necessary that the Ordinary should not diligently oversee this institution." It is also worth remembering that the bishop has jurisdiction.

[*Latin ed. p. 27*]

PAPIEN. Exercising freedom fully can only be achieved through practice; therefore, the right positively established by law cannot be lost through the mere omission of an action, nor can it be forfeited by a jurisdiction immediately derived from the nature of the episcopal office. No reasonable person would doubt this in the case of purely facultative actions. Furthermore, it is established in law that prescription cannot apply to these actions unless it is proven that they were expressly prohibited, and that the opposing party, for a period sufficient for prescription, acquiesced in that prohibition. *Gloss*, in *L. V. communi divid. 6 de Annali praescr.*; *De Luca de Benef., discept. 97, n. 13*; *Rota* in numerous decisions, especially in *Decis. 253, n. 8, p. 3, recent.*; there, it is stated: "It resists less, because this 'wall' has stood in that form for many years, because nothing can raise it; since this is a matter of pure faculty, it is not subject to prescription, even if it has not been 'raised' for a thousand years, unless there was a prior prohibition and legitimate acquiescence." These principles of law are consistent with the practice of the Sacred Congregation, which has never confirmed any observance of this kind by any document of the Supreme Pontiff. It suffices to point to the decision in one Visitation of the sacred diocese of Città di Castello, on July 18, 1857. When a certain sodality was granted an exemption from certain observances by the Bishop, and the Bishop sought to assert his rights, the following question was proposed: "Whether it can be established that there was an exemption, or rather, that there was a legitimate right of the Bishop to visit the sodality of the Blessed Virgin of Gracias, and to demand accounts from its officials." The Sacred Congregation responded: "Negatively to the first part, affirmatively in all respects to the second." However, even in the supposed case that the sodality actually enjoyed the alleged privilege, it does not follow that the oratory would be exempt from the jurisdiction of the Bishop. And indeed, such an oratory appears to be a public one, since it serves the use of the community, and not of any private person or family. Furthermore, it has a fixed altar, dedicated to Saint Justina, whose feast day is celebrated; these facts, as shown in *Ursaia, vol. 1, part 2, discept. 35*, demonstrate that it is a public oratory, and therefore equivalent to a

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church. Indeed, in Trent.

[*Latin ed. p. 28*]

28. PAPIEN. Synodus, in sessione 7, cap. 8, decrevit ut "Ordinarii locorum omnes ecclesiasticas institutiones, qualescumque, quomodolibet exemptas auctoritate apostolica, singulis annis visitarent." Ideo, Princeps huiusmodi obligationem, quod attinet ad Collegium Oratorium, nequit eludere. Verum tamen, cum illud Oratorium privatam naturam induerit, non tamen sequitur quod ab potestate Episcopi penitus sit exemptum, ut Abbatem Siculum, cap. ult., de *censibus* - ibi - scribit: "Et credo, quod licet Episcopus non possit vi huiusmodi Oratoria compellere, tamen posse ad illa accedere, ut videat, quomodo se habeant, et si praeter formam iuris constructa sint, et an honestate tractentur." Hoc concordant Barbosa de *Iure Eccles.*, univers., lib. 2, cap. 8, num. 15, Ventriglia in *Praxi*, tom. 2, annot. 19, num. 19, et alii. Quovis igitur respectu Oratorium consideretur, numquam huiusmodi potestas Episcopo denegari valet. Demum, quoad observantiam Constitutionum, gravissima obligatione Praesul videtur obstringi ad illas urgere. Hoc enim in primis evidenter eruitur ex mandato Summorum Pontificum ipsi commisso, quod suam vim iugiter exercere debet. Praeterea, in dubium revocari nequit quod voluntatem Fundatoris fuisse absolutum sit Constitutiones illas exacte observari, ut adolescentes, non solum in scientiis, sed etiam in recta christianaque vivendi ratione, ut in iisdem legitur, proficiant. Iamvero, munus est Praesulis omnem curam impendere ut voluntates piorum fundatorum adamussim exsequantur, et cavere ne Collegia ad promovendam iuvenum institutionem erecta, ob superiorum negligentiam ad vitia potius fovenda conducant. Ideo, Concilium *Tridentinum*, sess. 20, cap. 8, statuit: "Episcopi etiam, tamquam Sedis Apostolicae delegati, in casibus a iure concessis, omnium piarum dispositionum, tam in ultima voluntate, quam inter vivos, habeant ius visitandi hospitalia, collegia, quaecumque... et pia loca omnia, quomodocumque non cupiantur, etiamsi praedictorum locorum cura ad laicos pertineat, atque eadem pia loca exemptionis privilegio sint."

[*Latin ed. p. 29*]

PAPIEN. 29 > duties: and all those things which are instituted for the worship of God, or for the salvation of souls, or for supporting the poor, the same ought to be known and carried out by them, according to their office, according to the statutes of the sacred canons, without any custom, even one long forgotten, privilege, or statute hindering. Firmly adhering to these most wise provisions, having granted an exemption to a certain pious institution, it was nevertheless constantly declared that the Bishop could, by delegated right, visit it, and to watch over the observance of the will of the pious founder, as is stated in Reg. Exemptionis of January 30, 1836, and

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Bergomen, of December 18, 1858. Therefore, from what has been said so far, it spontaneously follows that the Bishop can and ought to employ all means to ensure that the governance of the College is ordered according to the mind of the Holy Founder, especially since all the Prelates unanimously lament the most complete collapse of discipline. The greatest benefit would accrue to the society if the discipline of the College were restored, since there would be no lack of good young men who would gladly submit to it. With these, and other considerations, the following question was raised: How should the following doubts be resolved? I. Does the College enjoy an exemption from the Bishop's jurisdiction in this case? And, if so, to what extent? II. What obligations does the Bishop have, both concerning the College's oratory, and concerning the observance of the constitutions in this case? RESOLUTION. After discussing the matter, the Sacred Congregation, on March 8, 1884, decided to respond as follows: To I: Affirmative. To II: Affirmative, with regard to the oratory, as Apostolic Delegate, according to the form of law; and with regard to the observance of the constitutions, according to the form of a commission of letters apostolic from Sixtus V and Paul V.

[*Latin ed. p. 30*]

30. PAPPIUS. From these points, it can be gathered that Bishops possess a double authority by law: namely, the authority for the ordinary administration of their own Diocese; and a delegated authority, which they exercise in extraordinary cases and against those possessing a privilege of exemption.

II. Exemptions are not violated by Bishops exercising delegated authority; for in these cases, the prelates do not act against the exempted in their own name, but in the name of the Apostolic See; which delegates its own authority to them, so that they may proceed with a firmer right against the exempted.

III. Therefore, if the Most Reverend Judges have determined that a certain institution is exempt from the ordinary jurisdiction of the Bishop, the same prelate can visit that institution as an Apostolic Delegate, that is, exercising delegated authority, or acting in the name of the Holy Father.

IV. A prescription cannot be established in matters that are purely facultative, unless it is proven that those subject to the prescription were expressly prohibited, and the opposing party acquiesced in the prohibition for a period sufficient for prescription to accrue.

V. In a certain territory, concerning three Bishops to whom it had been entrusted by Apostolic Letters to ensure the observance of the Constitutions, the jurisdiction had never been prescribed; for no opposition was ever made by the patron to the Bishops, who, out of excessive deference to the persons of the patrons and administrators, deferred the burden of this matter.

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VI. Bishops have the right and the duty, even as Apostolic Delegates, to visit hospitals and colleges, and to oversee the observance of the will of the pious founder; although the aforementioned institutions pertain to the laity.

VII. Bishops can and ought to fulfill the mandate given by Sixtus V and Paul V, namely, to strive to direct the administration of colleges, through the restoration of collapsed discipline, in such a way as to foster the religion and piety of the students, according to the mind of the founder.

[*Latin ed. p. 31*]

31. RIMINI. DECIMAS (1). Die 8 Martii 1884. Ut fertur, per concessionem Summi Pontificis Pii VII, Capitulum Ecclesiae Cathedralis Ariminensis iam ab anno 1819 decimas colligebat in nonnullis paroeciis eiusdem Dioecesis. Cum tempore, post praedictam concessionem, cum fieret ut hic vel ille ager earumdem paroeciarum tunc primum excoleretur, Capitulum decimas quoque novales (2) colligere coepit. Parochi omnes conticuerunt, excepto tantummodo Archipresbytero oppidi Misano, qui anno 1855 apud Capitulum instabat pro sibi vindicandis decimis novalibus suae paroeciae. Huiusmodi petitionem duo Canonici ex Capituli mandato examinandam susceperunt, decernentes interim ut decimae controversae illius anni in loco depositi collocarentur. Quaestio tamen insoluta mansit, quia paullo post asiaticus morbus supervenit, duo praefati Canonici supremum diem obierunt et Archipresbyter instans paroeciam dimisit. Vertente autem anno 1832, hodiernus Archipresbyter loci Misano, necnon Archipresbyter oppidi Casale una simul decimas novales suarum paroeciarum requisierunt a Capitulo: cui nihil responderunt, denuntiant, ut res definiretur, se interim praedictas decimas collecturos fore. Sed ab huiusmodi proposito eos deterruit Capitulum, atque initio mensis Iulii 1833 Sacratissimum Principem adivit, varia proponens enucleanda dubia. COMPENDIUM FACTI. EX. Disceptatio Synoptica. IURA PAROCHORUM. Neminem latet decimas sive antiquas sive novales Parochis omnino deberi, Cap. Cum contingat (1) Recole Vol. I, 619 Vol. VI, 387 Vol. X, 388. (2) Ex cap. quam. « agrum quod aliquando quid de per novo cultus novale 21 ad culturam fuisset. » de verb. sign, redactum, nihil aliud de quo accipi hoc nomine non extat memoria.

[*Latin ed. p. 32*]

32. ARI MINEN. 29, and Cap. 30 concerning tithes, so that these individuals may also have a right founded in law on their side against anyone, even Clairac, a monastery, a chapter, indeed, even a bishop; Barbosa de Off. et potest. Paroch. p. 3 cap. 28 §. 2 no. 7 and 8, Fagnanus in cap. Cum contingat 29 de decim., Pirhing eod. tit. no. 80, Rebuffus de decim. q. 7 no. 5. Consequently, when a doubt or dispute arises concerning tithes, the burden of proof does not fall upon the parish priest, but upon those who are

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claiming the tithes; as the aforementioned Doctors unanimously state with a common opinion. However, although someone, other than the parish priest, may possess a privilege absolutely and without restriction to receive [{-vimas] in a certain parish, that privilege does not extend to the new tithes, unless there is an explicit mention of these; Covarruvias Var. Resolut, lib. 1 cap. 17, Guttierez lib. 2 qq. Can cap. 21 n. 183, Barbosa in cap. Ex parte 27 de decim. n. 6 and 9, Zoesius eod. tit. no. 56, Pirhing, ibid. no. 104, and many others. And indeed, this is so, because such a privilege is objectionable, since it prejudices the parish priests, to whom, by law, it belongs; therefore, it should not be extended, but rather restricted, as is stated in cap. Cum tua 25 §. fin. de decimis. Moreover, a privilege specifically obtained concerning new tithes by those who were fully receiving the old tithes, does not extend beyond one-half of those new tithes, unless otherwise expressly stated. Cap. Statuto 2 §. 1 de decim. in ö — ibi — "Furthermore, we decree that the same indulgence [of new tithes] obtained by those who, at the time of the petition, were completely receiving the old tithes, shall not extend beyond one-half of the new tithes: because it is not likely that, if then, full and complete reception of the old tithes had been expressly stated, the Apostolic See would have likewise and similarly granted indulgences for new tithes in such a grave detriment to parochial churches, and that, by reason of such an indulgence, whether already obtained or to be obtained in the future, more than one-half of the new tithes themselves cannot be claimed, acquired, or received concerning [new tithes] that will arise in the future."

[*Latin ed. p. 33*]

ARTICLE 33. "Although it is true that more weight was given in the past to this matter, it should not be considered harsh, but rather pious and benevolent, if a remedy is provided for the burden imposed on parochial churches by the collection of *novales* [new tenths] (which may arise from the distinction of this indulgence). It is clearly established by law that a Chapter cannot validly claim the right to collect *novales* unless it demonstrates that it possesses an apostolic privilege, explicitly protected by the most stringent clauses, which specifically addresses all *novales*, or unless it presents another title equivalent to a privilege. Indeed, the Chapter itself, as I have already mentioned regarding the privilege, asserts that it was granted the faculty in the year 1819 to collect tenths in certain parishes; but it does not dare to assert anything of the kind regarding *novales*, although it strives to have these specifically attributed to it. Moreover, as the pastors affirm, the asserted privilege does not extend to *novales*. Therefore, these pastors rightly argue that the aforementioned privilege either does not exist at all, or exists only with regard to the ancient tenths. And this, it seems to me, must be maintained, unless the contrary is proven. However, if the privilege is lacking, and the Chapter does not present another title,

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then the recourse to prescription is entirely futile. For prescription cannot have effect in this case, unless it is either immemorial or forty years long, together with the title; Ferraris V. de decimarum art. 4 n. 5 – *ibidem* – "In order to prescribe [the right to collect tenths] against the parochial church, forty years together with the title are required, or a time immemorial." This is the common law. And the reason is, because in order for prescription against the Church to be valid, that length of time together with the title is required, whenever the common law is opposed, or there is a presumption against the one claiming prescription, as expressly stated in chapter I on prescriptions, in 6 – *ibidem* – "For although, if the one who prescribes the ecclesiastical thing, the common law is not opposed to him, or there is no presumption against him, good faith suffices; but when the common law is opposed to him, or there is a presumption against him, *homo fideli* [a faithful man], Tom. XVII. fase. GXCIII. 3."

[*Latin ed. p. 34*]

34. ARIMINEN. It is not sufficient, but it is a necessary title, which gives the possessor the right to prescribe: unless a period of time is alleged for which the prescription is valid, and there is no memory of the contrary. However, common law resists the prescription of tithes against the Parish Church, and there is a presumption against the one who is attempting to prescribe, since it is expressly stated that tithes belong by law to the Parishes. Therefore, etc. Furthermore, the Parishes observe that not only do they lack the prescription requirement in the case of a long prescription, or a forty-year prescription with a title, but also the lapse of forty years together with good faith. Indeed, new agricultural lands gradually began to be added between the fortieth and fiftieth years of this century; and moreover, a protest from the local Parish to the Missionary intervened in the year 1855. In this protestation, the Parishes argue that the Chapter has completely lost good faith, if it ever had it, in collecting new tithes against the clear right of the Parishes. Reiffenstuel, *lib. 2 Decretal*, Title 36, number 143: "For prescription, good faith is required, but when the prescription is contrary to common law, or there is a presumption against it, it is considered to be lacking good faith, unless a special title can be alleged to remove such a presumption, or to purge the bad faith: therefore, to remove and purge the bad faith, the allegation of a special title is required." Whatever may be the case, whether it concerns good faith or the lapse of forty years, the matter returns to the same point, because no title is alleged by the Chapter, or at least asserted, with regard to the new tithes. Given the state of affairs, it seems easy to demonstrate that the burden lies with the Chapter to restore the new tithes previously collected, while the Parishes have the right to reclaim them. Indeed, if, according to the opinion of the Parishes, you do not admit the good faith of the Chapter in this case, then it is certain that they are entirely obligated to make restitution, as is clear from

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the law. If a person C. claims a fund from L., it is certain that, according to the Code, in the same title, it is said: "It is certain that possessors with bad faith must render all fruits with the thing itself." This text expressly agrees.

[*Latin ed. p. 35*]

ARIMINEN. 35, in §. Si quis, a non domino Instit. de Rerum div. de quocumque malae fidei possessore indistincte pronuncians: "Qui alienum fundum sciens possederà," tum fundo etiam fructus (licet consumpti sint) cogitur restituere. Si vero bonam fidem Capituli admittere velis, idem prorsus consequitur, quia nullus titulus allegatur. Doctores enim licet dissentiant in casu, quo possessionis titulus habetur; pax tamen inter eosdem est, ubi titulus iste deficiat. Reiffenstuel, *lib. 2 Decretal*, tit. 13, §. 6, num. 135: "Utrum bonae fidei possessor "lucretur etiam fructus naturales? Resp. I. Probabilius est," quod talis cum titulo legitimo, saltem colorato, "etiam fructus naturales" lucretur; non item quando nullum habet titulum. . . . Etsi contrarium teneat Glossa. . . . et non pauci alii, qui moti ex *I. Fructus percipiendo* ff. de Usuris tenent bonae fidei possessorem, etiam cum titulo, fructus naturales non facere suos; sed teneri reddere universos, tum extantes, et quidem rei vindicatione, tum consumptos, dando eorum pretium. > Ne autem Capitulum ex gratia consequatur id quod consequi nequit ex iure, Parochi ostendere curarunt suas praebendas, oneribus detractis, tenuissimos suppeditare redditus, qui ad honestam sustentationem omnino impares sunt. Idque ut clarius appareat, unusquisque Parochus exhibet summam rationum, ac minutatim exponit nomina expensi et accepti, ex quibus colligitur Parochum oppidi Casale vix habere annuas lib. 130 et Parochum loci Misano lib. 125. Canonici contra, sufficientibus fruuntur reditibus. Porro contraria huius Parochi petitio rationabilis omnino ac iuri conformis apparet. Sicuti enim privilegium eximens a solutione decimarum cessat quando enormiter Parochum laedit, ceu unanimiter tradunt Doctores, *arg. cap. Suggestum 9 de decimis, cap. Quid per novale de V. S. et cap. penult. de Cleric. non resid.*, ita pariter dicendum videtur de privilegio colligendi decimas. Siquidem universaliter loquendo, quodvis privilegium cessat quando incipit esse enormiter praeiudiciosum tertio, uti habet Glossa, *com-*

[*Latin ed. p. 36*]

36. OPINION. The minutes received from the Royal Council of December 16, concerning the matter at hand, in paragraph 6, state: "Because such a grave prejudice has arisen, the matter has reached a point where, had the Pontiff foreseen this, he would not have granted the privilege." RIGHTS OF THE CHAPTER. On the other hand, the Chapter argues that the majority of the new lands consist of coastal areas, which are adjacent to the lands subject to ancient tithes, and which are gradually increasing due to the slow

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recession of the sea. Therefore, it believes that the tithes of these new lands are entirely due to it; because, just as the sea slowly recedes, it can grow and absorb even the ancient lands, over which it certainly has the right to collect tithes. This, moreover, is entirely consistent with the provisions of civil law, and especially with the laws 7, 30, 38, and 65 and following, concerning the acquisition of property, where the additions made either by alluvion or by the recession of a river or sea are clearly explained, and are assigned to the owners of the neighboring lands. Furthermore, it claims the benefit of prescription, asserting that since the year 1819, it has collected both parochial tithes, by concession of Pope Pius VII, and also tithes from the new lands, in good faith. In support of this, it cites chapter 6 of the work "Ad Aures," where it is written: "It has come to our ears that two churches were disputing about tithes, one of which had possessed, for forty years, tithes in the other's parish..." "Let this document testify to your fraternity that the condition of the possessor is better, both by divine and human law: for a forty-year prescription completely excludes any action." Laymann, book 4, treatise 6, chapter 6, number 7 states: "Therefore, the Abbot generally teaches... that prescription does not extend from case to case, because no more is prescribed than can be possessed. Therefore, if you were in possession of collecting tithes from the lands of another parish, you would not thereby also prescribe the right to tithes on the new lands, if those lands had previously yielded no produce, and therefore no tithes were customarily collected from them. Conversely, if you have also collected tithes from those new lands in good faith..."

[*Latin ed. p. 37*]

ARIMINEN. 37 It is also noted that the Parish Priest of Misario, in the year 1855, established a fund within the Chapter for the collection of new tithes. It is important to observe that, having disregarded this petition, other Parish Priests were unable to interrupt the aforementioned prescription, neither legally, because the Chapter was not summoned by any legal act that, according to the law, would induce such an interruption; nor naturally, because the Chapter persevered in possession of the same goods with the same good faith as before. And although the aforementioned petition may have raised some doubt for the Chapter, nevertheless, since it occurred after the beginning of the prescription, it does not vitiate good faith, as the Glossa states in the last chapter concerning Prescription, because in cases of doubt, the condition of the possessor is preferable, according to Reg. 65 of the Tures in 6. Furthermore, even granting, but not conceding, that the aforementioned arguments do not prove that the Chapter has the right to collect the new tithes, nevertheless, it is not obligated to return the past tithes, which it received and consumed in good faith, because it did not become enriched from them, as will be shown below. Thus, Reiffenstuel explicitly states in book

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2 of the Decretals, Title 13, number 142: "A possessor in good faith is not obligated to restore the fruits consumed before the dispute, when he has not become enriched from them"; and this applies not only to industrial fruits, but also to natural fruits, and whether someone possesses with a title or without a title." Thus, the Glossa in chapter Gravis v. fructus and the Abbot ibid. number 6, and Barbosa number 8 de Restitui. Spoliat. Speculator, title concerning fruits and interest, § 1, number 2, Covarruvias, book 1, Variations and Resolutions, chapter 3, number 6, Sánchez, book 2 in Decalog, chapter 23, number 4, and many others, state the same. Regarding the Chapter's requests, it was noted that these tithes constitute, in addition to other small revenues, a fund for the provision and distribution of ten canonries and six Mansionaries. Therefore, if the Chapter were now denied the new tithes, which appear to constitute a significant portion of its income, its condition would be worsened, affecting the Mansionaries.

[*Latin ed. p. 38*]

38. ARIMINEN. If support were to fail, the service of the choir would suffer detriment. Having therefore briefly considered these matters on both sides, the Fathers were asked to clarify the following doubts. I. Do the parish priests have the right to collect new tithes in the locality? And, if so, do they have the right to reclaim tithes collected by the Chapter in this case? III. In this case, should a portion of the old tithes also be returned to the parish priest? And, if so, to both the first and third? IV. How and to what extent should the requests of the Chapter be granted in this case?

RESOLUTION. The Sacred Congregation of Councils, having thoroughly examined the matter, decided on March 8, 1884, to respond as follows: To I. Affirmative, and furthermore. To II. Affirmative, from the beginning of the dispute, and furthermore. To III. Negative, and furthermore. To IV. Negative, in all respects, and furthermore.

FROM WHICH WE GATHER:

I. Both ancient and new tithes are due to the parish priests; all rights proclaim this, so that they have a well-founded claim by law against anyone, even a cleric, a monastery, and a Chapter.

II. Consequently, in the case of a dispute regarding the collection of tithes, the burden of proof rests not on the parish priest, but on those who are claiming the tithes for themselves.

III. To prove that new tithes are due to the Chapter, it would have been necessary to prove that the privilege granted by Pius VII to the same Chapter regarding old tithes extended also to new tithes; that is, that mention of these was made in the document of the concession, as a special apostolic privilege.

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IV. For privileges, since they are odious, yield to common right.

[*Latin ed. p. 39*]

ARTICLE 39. These [rules] cannot extend to the prejudice of those for whom the law is intended, but rather they ought to be restricted. V. A possessor in good faith is not held to restore the fruits consumed before a contested lawsuit, if he has not become richer from these. V I. It should be understood that the Chapter held the position of a possessor in good faith with regard to the collection of new tithes, because the Holy Congregation has granted to the Parishes the right to reclaim new tithes collected, only from the day the lawsuit began.

FROM THE DECREE OF THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS OF CALARITANA, OR THE ORDER OF THE MINOR OBSERVANTS, dated March 7, 1884.

COMPENDIUM OF THE CASE. The controversy now in question between the Chapter of Calaritan and the Minor Observants was proposed on March 28, 1879, under the formula of doubt: "Whether it is established by law that the Chapter of Calaritan has the right to enter with a cross erected and to perform funeral rites in the Church of Santa Rosalia." And the response was: "Affirmative." On September 5th, the following question was proposed again under doubt: "Whether and how one should depart from the decisions of March 28, 1879, in this case." But the Holy Congregation of Bishops and Regular Canons responded: "In the decisions" (1). However, these two decisions did not suffice to bring the matter to an end. For when the judgment of the Reverend Fathers was made known to the parties, it was interpreted differently by them. Indeed, one party considered that from this response it was permissible for the Chapter to enter with a cross erected into the Church of Santa Rosalia, and to perform funeral rites there whenever the matter concerned the deceased, who... (1) You have all of this in Volume XII, page 298; I beg you to remember, so that the matter may be clearer to you.

[*Latin ed. p. 40*]

4. The Galaritan community possessed a burial ground for the Gentiles, or had chosen burial therein. However, another opinion held that from the same response, the right to perform funerals had been granted to the Chapter of Calaritana within the Church of Saint Rosalia, whenever it pleased them, either for the canons and beneficiaries and their parents, or for any other person who did not have a Gentile burial place there, nor had chosen burial there in their will. Synopsis of the Discussion. The Provincial Father noted that this had been drawn from an ancient decree of Bishop Falletti, which granted the Chapter the right to perform funerals in the Church of Saint Rosalia only for those who had a burial place there, or for their ancestors, or who chose it. Therefore, another interpretation contradicts the

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letter and spirit of the same decree; because that Bishop derogated from the sacred canons and the rights of the parish priests, favoring only the canons and beneficiaries, who ought to be buried in the Cathedral. Although, from the response of March 28, 1879, the Chapter was granted a general permission to perform funerals, nevertheless, since this derogates from the common law, it must be interpreted restrictively, according to the rule of law, *reg. iur. 28 in 6*. And to the point, it cites Hut, *ius can. lib. 1 dec. tit. 3 q. 14*: "If, for all those reading, the meaning of the rescript remains doubtful, the rescripts must be explained according to the common law; even if the words must be taken in some way improperly, chapter 18 on reservations. Then, as they are odious, they must be taken strictly, so that they are not extended from person to person in the rescript not expressly mentioned." The Provincial Father also noted that, according to the law, funerals for deceased canons and beneficiaries ought to be performed in the Cathedral, as stated in Pignat, *tom. 5, cons. 5 n. 6*: "Canons ought not to be buried in the Cathedral, when there is a burial place for them." Adhering to this principle of law, until the year 1875, the Chapter brought the bodies of canons into the Cathedral; from that time until now, after the funeral, they have transferred them to the cemetery. OBSERVANCE OF THE LAWS OF THE FATHERS.

[*Latin ed. p. 41*]

CALARITANA 41. Concerning this matter, the Chapter was unable, after the year 1875, by its own authority, to extend the concession it had received from ancient times from three parishes of this City, namely, the burial of canons, beneficed persons, and their parents, who resided within the boundaries of the three parishes. For, through this extension, the rights of a third party are harmed. However, the same Provincial asserted that the Religious did not object because the Chapter wished to enter their church with its elevated cross, but because it presumed to perform the funeral rites therein. For one thing is the Chapter's precedence in association, and another is the competence of jurisdiction; the Holy Congregation, in Malta, on November 18, 1806: "Precedence should always be given to the Canons and Clerics of the Cathedral Church, from the house of the deceased to the church in which the bodies of the deceased are to be buried. And in the church where the body is buried, the office must be performed by the curate who presides over that church." Finally, it was noted that the Decree of Falletti did indeed order that, for certain particular reasons, the Religious should send a notification to the legal authorities regarding the performance of funeral rites over the bodies brought to their church, but that this order referred only to the bodies of those who had a designated tomb or were of pagan faith.

RIGHTS OF THE CHAPTER. In favor of the Chapter, general principles of law were invoked, by which it is generally understood that a rescript

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should be interpreted without any distinction, according to the well-known adage: "where the law does not distinguish, neither should we distinguish." Furthermore, it was noted that a principle of correct interpretation is that a rescript should be in accordance with the actual petition and with the principal subject of the question, when the matter remains doubtful. Now, it is certain that the Provincial, in his first supplication, explained to the Most Holy Father that the Canons of the Cathedral of Calaritana had, in a chapter meeting (1), decided, without hearing the Religious, to carry out the funeral rites. The canons who remained, since they were old and infirm, carried out the funeral rites with great difficulty, because the number of canons in the chapter is determined by the most recent civil law.

[*Latin ed. p. 42*]

42. In CALARITANO, Missa cantatur, in praesentia cadaveri, pro fratribus et beneficiariis in Ecclesia Sanctae Rosaliae, quae pertinuit ad Minores Observantes. Hoc, autem, manifestatur etiam ex voto, datum ad id, Episcopi, qui censuit Minores Observantes non posse impedire Capitulum Cathedralis ut Missam canat, in praesentia cadaveri, et funera exsequatur pro aliquo canonico aut beneficiario Cathedralis. Quoniam, ex consuetudine quae viget ab immemorabili, Capitulum Cathedralis potest ingredi etiam alias Ecclesias Regularium ad funera peragenda; sic, ab eadem consuetudine, ingreditur Ecclesiam Minorum Observantium. Hi, cum morarentur extra civitatem, obtinuerunt ab Episcopo, Municipio, et sodalitate patrono, ut se transferrent ad civitatem apud Ecclesiam Sanctae Rosaliae. In ea, ex antiqua consuetudine, Capitulum iam funera exsequiebat. Religiosi Ecclesiam receperunt cum omnibus oneribus. Quamobrem, etsi Capitulum Calaritanum minime intendat ad id ut doctrinae gravissimorum auctorum detrahatur, tamen sustinuit eam aptari non posse in proposito; quia omne ius suum fundat in consuetudine immemorabili. Quae consuetudo roboratur per decretum Episcopi Falletti, a quo facile eruitur ius Capituli non imminui, sed potius coarctari facultatem Observantium, ne aliquem admittant ad sepulturam in illa Ecclesia, praeter illos qui eam elegerint per testamentum. Quibus aliisque praenotatis, propositum fuit enodandum dubium: An ius quod Sacra Congregatio concedit Capitulo in explendis exequiis super cadaveribus in suo decreto 28 Martii 1879, extendatur ad omnia cadavera; sive ad illa quae cadavera ad Cathedralem et deinde ad coemeterium, ex variis paroeciis civitatis, quae multum distant et semitis dissitae sunt. Notandum insuper est quod Minores Observantes obtinuerunt Ecclesiam Sanctae Rosaliae cum conditione servandi, inter alia, iura omnia et consuetudines, erecta cruce et favore Capituli Calaritani.

[*Latin ed. p. 43*]

43. In CALARITANA, they have chosen burial in our church, or, in the

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case of the elders, burial there. Or they have a RESOLUTION. The Sacred Congregation of Bishops and Regulars, after deliberation on March 7, 1884, decided to respond: "Affirmative to the first part, and furthermore. From which it is gathered: I. All bodies, for which the Chapter of Calaritanum must perform the funeral rites, can be brought to the church of St. Rosalia, without the knowledge of the Fathers, according to an ancient custom; by which also the rights of exempt churches are violated. FROM THE INSTRUCTION CONCERNING THE SECT OF THE MASONS, from the Most Holy and Universal Inquisition to all the Bishops of the Catholic world. To avert the most serious evils which the Masonic sect and others infected by it have brought to the Church and to all orders of citizens, the Most Holy Pope Leo XIII, with entirely wise counsel, recently issued Encyclical Letters to all the Bishops of the Catholic world. In these Letters, He reveals the doctrines, aims, and plans of these sects, recounts the concerns of the Roman Pontiffs for freeing the human family from such a nefarious pestilence, condemns these same sects again and again, and also teaches how and with what weapons one must fight against them, and with what remedies one must heal the wounds inflicted by them. But, since it has become apparent to His Holiness that the most abundant fruits of His concerns will be hoped for only when all the Pastors of the Church contribute their efforts, their counsel, and their labors with a united effort, He commanded this Most Holy Congregation of the Roman and Universal Inquisition to propose to them what should be most appropriate for these Pastors to undertake. Following the commands of the Supreme Pontiff, as is fitting, the Most Eminent Fathers, together with me, the General Inquisitors, have judged that this Instruction should be given to all the Bishops and other local Ordinaries. 1. First of all, the most clement Pope, looking to the salvation of souls, following the footsteps of our Savior Jesus Christ, who did not come to call the righteous, but sinners to repentance, with a paternal voice invites all those who have given their names to the Masonic sect and other condemned sects, to cleanse the stains of their souls and to come earnestly into the bosom of divine mercy. For this purpose, He has used the same benignity with which His predecessor, Leo XIII, for a full year...

[*Latin ed. p. 44*]

OF THE MASONIC SECT 44. After the rites commonly known have been promulgated, as mentioned in the Apostolic Letters sent to each diocese, the obligation is suspended to denounce the hidden leaders and chiefs of these sects, and also the imposition of censures. However, a special faculty is granted to all confessors approved by the local Ordinaries, so that they may absolve those who have truly repented and have abandoned the sects from these same censures, and reconcile them with the Church. Therefore, the sacred prelates should announce this benevolence of the Supreme Pon-

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tiff to their faithful. They would perform their pastoral duty diligently if, during this year, which the Pope wishes to be devoted in a special way to mercy, they encouraged their flock through sacred exercises, in the manner of missions, to meditate on eternal truths and to renew their spirit.

2. Furthermore, the intention of His Holiness is that the Encyclical Letters be disseminated with the utmost diligence, so that all the faithful may more easily understand the pernicious poison that is spreading among them, and the ruin that awaits them and their children, unless they take precautions in time. Then, the most diligent and effective efforts must be made to apply the remedies, both those proposed by the Pope, and those suggested by the prudence of each individual.

3. Above all, it is necessary to arouse the diligence and zeal of the parish priests in this matter; then, the efforts of those to whom God has granted the ability to speak or write through the generosity of all good men should be enlisted, or those to whom the care of proclaiming the divine word, of expiating the sins of the Christian people, or even of educating youth has been entrusted, so that they too may contribute their efforts to expose the impious doctrines and infamous practices of the Masons and other condemned societies, and to bring back to the path of salvation those who have joined them, whether rashly and carelessly, or deliberately and thoughtfully, and to warn those who have not yet fallen into their snares.

4. Besides these, there are other sects that are prohibited and should be avoided under pain of serious guilt, among which, above all, those must be mentioned that demand an oath from their members to reveal nothing to senators, and to render all kinds of obedience to hidden leaders. It should also be noted that there are some societies that, although it cannot be certainly determined whether they belong to those that we have mentioned, are nevertheless doubtful and full of danger, both because of the doctrines they profess, and because of the manner of acting followed by those who are their leaders and are governed by them. From these also, the sacred pastors must take care to protect their flock and to...

[*Latin ed. p. 45*]

OF THE MASSONIC SECT 45. It is necessary to be vigilant, and indeed all the more so, because of the semblance of honesty that these [Masons] maintain, which makes the danger of corruption hidden within them more difficult for simple people, especially young people, to perceive and avoid. 5. Therefore, it will be most useful to the sacred Pastors for their flock, and pleasing to Their Holiness, if, in addition to the common and customary form of preaching, which must certainly be maintained, they add that which is commonly used to defend Catholic truths, and which is most suitable for refuting errors, which are being spread more widely and with great detriment to souls, as the Apostolic Letters lament. This form of preaching will be most salutary for the Christian people when, after refuting errors,

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I clearly and systematically explain the power, excellence, and usefulness of Christian doctrine, and will stir up love for the Catholic Church, which preserves that doctrine whole, incorrupt, and undefiled, in the hearts of the listeners. 6. Since young people, the poor, artisans, and workers are more easily enticed and caught by the most cunning arts and deceptions of sects, special care must also be directed towards these. And with regard to young people, it must be recognized with the utmost importance that, from a tender age, both within the domestic walls, as well as in churches and schools, they should be thoroughly instructed in the Christian faith and Christian morals, and that they should be taught early on how to protect themselves from the snares of dark sects, so that, if they should fall into their traps, they will not be shamefully subjected to the most unjust masters, with great detriment to their eternal salvation and human dignity. It will be very beneficial for the safety of young people if societies have been formed, which have taken the name of the Most Blessed Virgin or another heavenly Patron. In these gatherings, like in gymnasiums, especially if they are presided over by priests and laymen of outstanding wisdom and skill, young people will cultivate virtues, openly profess their faith in religion, disregarding the mockery of the impious, and will become accustomed to abhorring whatever is alien to Catholic truth and sanctity. 7. It is also useful for fathers and mothers to form a fraternal bond, in order that, with united efforts, they may more diligently strive for the eternal salvation and proper upbringing of their children, and more effectively provide for them. Many such associations have been established, among men and women alike, who have entrusted themselves to a heavenly Patron, and are producing the most joyful fruits of religion and piety. 8. As for artisans and workers, among whom, especially, those are often chosen who intend to undermine the very foundations of religion and society, let the sacred pastors keep before their eyes those ancient colleges of craftsmen, or guilds and associations of all kinds, which, with a heavenly Patron associated with them, were in former times a splendid ornament to the cities, and an increase to the arts, whether more refined or more humble. And let other gatherings be formed from those who are engaged in trade or other professions.

[*Latin ed. p. 46*]

46. Concerning these associations, those who dedicate themselves to their more rigorous disciplines will again be vigilant, and those who join them will diligently be instructed in the duties of religion and will perform them, and together they will assist each other in human necessities, which are often brought about by bodily illness, old age, or poverty. Those who preside over these groups will diligently ensure that the members are distinguished by the integrity of their morals, the skill in performing good works, the docility in learning, and the constancy in their efforts, so that they may more easily provide for what is necessary for life. Furthermore,

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these prelates will not neglect to oversee these societies, to propose or approve regulations, to reconcile the disagreements of the wealthy, and to support them with their patronage and assistance.

9. That wonderful association of prayers and works, which has arisen in some places and is now beginning to flourish in others, will not neglect the particular care of these groups. It must be carefully cultivated so that as many as possible who hold correct views on religion may be enrolled in it. For since its purpose is to foster and promote the works of religion and piety with a general harmony of spirit throughout the entire Catholic Church, and to constantly strive to appease divine indignation, it is easily understood how great its benefit will be in these times of misery. The bishops, in commending it, will especially recommend the prayers that bear the name of the Rosary of the Blessed Virgin, which the Most Holy Pope has recently praised with the highest commendations and has urged to be recited with the greatest devotion. Among the works of piety, they will choose those that are commonly practiced by those who belong to the Third Order of St. Francis, and they will take care to enroll as many as possible among the members of St. Vincent de Paul, or the Marian groups, so that the most excellent works that are performed by them with such widespread approval and benefit to souls may continue to flourish more and more.

10. It would finally be very beneficial if, where circumstances and people permit, Catholic academies were established, and if those useful gatherings, or congresses as they are called, were held, to which the most learned men from one or more regions would be appointed, and if the prelates would not hesitate to honor these gatherings with their presence, so that together they might initiate plans for the advancement of the Catholic cause under their auspices, and decide on what measures would be most beneficial to this cause and to the public good. It would also be fitting if those who have diligently defended the rights of God and the Church through their writings and studies, and who are constantly combating new errors and objections, would join together in a united effort, with the bishops as their leaders, to wage war. For it cannot be denied that, if all the forces that are still alive and vigorous in the Church, with God's help, agree together, the most abundant fruits will be brought to present-day society, freeing it from the contagion of harmful sects and defending the liberty of Christ.

11. These proposals will not easily achieve their desired end unless the forces are united, and therefore, unless the archbishops consult and decide together with their suffragans what must be done to fulfill the desires of the Supreme Pastor.

[*Latin ed. p. 47*]

47. As it is the will of this Supreme Congregation that each [member] should, as soon as possible, and in the future, whenever describing the condition of their diocese, not fail to report what each one, either individually

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or together with their colleagues in the episcopate, has done, and what outcome their efforts have achieved. Given in Rome, from the Chancery of the Holy Office, on the 10th of May, 1884. RAPHAEL Cardinal MONACO.

ON THE MASSONIC SECT: A DECREE from the Holy Congregation, in which it is declared that it is not established whether one can obtain the Indulgence of the Way of the Cross more than once in a day.

Nicholas Joseph Dabert, Bishop of Petrocoriensis in Gallia, humbly requested: Whether the Indulgences attached to the practice of the Way of the Cross are valid so many times in a day as that practice is repeated?

The Holy Congregation, presiding over Indulgences and Sacred Relics, responded: From the documents, it is not established that the Indulgences, granted for the pious practice of the Way of the Cross, are valid as many times as the aforementioned pious practice is repeated.

From the Secretariat of the same Holy Congregation, on the month of September, 1883. Seal. A. Cardinal BILIO. FRANCIS DELLA VOLPE, Secretary.

A DECREE whereby all Stations of the Way of the Cross hitherto invalidly erected are confirmed.

Most Blessed Father, Brother Bernardinus of Portu Romantino, General Minister of the entire Order of the Minor Friars, prostrate at the feet of Your Holiness, humbly explains that, from a publication in the journal entitled "Acta Ordinis Minorum," it has been discovered that certain Stations of the Holy Way of the Cross have been erected in such a way as to be invalid.

Since it seems very difficult to renew such erections, and so that the faithful visitors of such invalidly erected stations may not be deprived of the Indulgences granted by the Holy See, the Petitioner humbly implores Your Holiness to deign to confirm and ratify all Stations of the Holy Way of the Cross hitherto invalidly erected. Which grace, etc.

By virtue of special faculties granted by His Most Holy Father, Pope Leo XIII, the Holy Congregation, presiding over Indulgences and Sacred Relics, has benignly remedied all the defects mentioned in the aforementioned petition, notwithstanding any contrary provisions.

Given in Rome, from the Secretariat of the same Holy Congregation, on the 31st of July, 1883. A. Cardinal BILIO. FRANCIS DELLA VOLPE, Secretary.

[*Latin ed. p. 48*]

48 FROM THE HOLY CONGREGATION OF THE INDEX, DECREE, Thursday, June 18, 1884. The Holy Congregation of Eminent and Reverend Cardinals of the Holy Roman Church, by order of the Most Holy Lord Pope Leo XIII and the Holy Apostolic See, which is entrusted with the task of adding books to, and prohibiting, expurgating, or permitting books throughout the Christian Republic, has ordered and does order that the

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following work, condemned and prohibited by the Decree of the Sacred Congregation of the Holy Office, on Thursday, July 16, 1884, be added to the Index of Prohibited Books: "Lo scandalo dei u Vaticano Regio" [The Scandal of the Vatican Region], by Carlo M. Curci, with brief notes intended to show the author's good intentions, and with two appendices. Florence. Rome, Brothers Bencini, publishers. 1884. Therefore, no person of any rank or condition whatsoever may, in any place and in any language, dare to publish, or to read or retain, the aforementioned work, but must deliver it to the Ordinary of the place, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These matters, having been reported to the Most Holy Lord Pope Leo XIII by me, in writing, from the Secret Archives, His Holiness approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome, on June 18, 1884, by FR. THOMAS M. CARD. MARTINELLI, Prefect. FR. JEROME PIUS SACCHERI, of the Order of Preachers, Secretary of the Holy Congregation of the Secret. Place for the Seal. On July 22, 1884, I, the undersigned, Magister Cursorum, testify that the aforementioned Decree was affixed and published in the City. Vincentius Benaglia, Magister Cursorum.

[*Latin ed. p. 49*]

49. ENCYCLICAL LETTER of His Holiness Pope LEO XIII, by which He commands that, during the month of October of the present year, the Most Holy Rosary be recited in all churches of the curia.

LEO, POPE XIII, TO THE VENERABLE BROTHERS, PATRIARCHS, PRIMATES, ARCHBISHOPS, AND BISHOPS OF THE CATHOLIC WORLD, GREETINGS AND COMMUNION WITH THE APOSTOLIC SEE.

As you know, in the preceding year, through Our Encyclical Letters, We decreed that, in all parts of the Catholic world, the Church, striving for heavenly patronage, should honor the most holy Rosary of the Blessed Virgin Mary throughout the entire month of October. In this, We followed Our predecessors, who, in difficult times for the Church, accustomed to increase their devotion, to turn to the august Virgin, and to implore her help through fervent prayers.

Indeed, so much zeal and concord of spirit was shown everywhere in obedience to Our will, that it clearly appeared how much ardor of religion and piety exists in the Christian people, and how much hope they place in the heavenly patronage of the Virgin Mary. We declare that this manifested fervor of piety and faith has brought us not a little consolation, especially in these times burdened by so many troubles and evils, and has even strengthened our spirit to endure even greater trials, if it should please God. For, until the spirit of prayer is poured out upon the house of David and upon the inhabitants of Jerusalem, we are led to a certain hope, that God will one

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day have mercy on His Church, and, having pity on her, will finally hear the prayers of those who implore Him through Her, whom He willed to be the minister of heavenly graces.

Therefore, considering the circumstances that, as We have said, last year prompted Us to encourage public piety, We have deemed it Our duty, Venerable Brothers, also this year to exhort the Christian people to persevere in this manner of prayer, which is called the Rosary of Mary, so that they may obtain the powerful patronage of the great Mother of God. For, since there is so much obstinacy of purpose in those who oppose the Christian name, there must be no less constancy of will in those who defend it, especially since the heavenly help and the benefits conferred upon us by God have been completed, Vol. XVII, fase. GXGIV.

[*Latin ed. p. 50*]

50. The fruits of our devotion are often seen in the form of letters. And it is pleasing to recall the example of the great Judith, who, presenting the type of the most holy Virgin, patiently endured the insults of the foolish Jews, and, by the will of God, determined the day to help the oppressed people. We must also consider the example of the Apostles, who persevered in prayer with Mary, the Mother of Jesus, unitedly awaiting the greatest gift of the Spirit of Paraclete. For it is now a matter of a difficult and important thing: to humble the ancient and most formidable enemy in the height of his power; to vindicate the liberty of the Church and its Head; to preserve and protect those safeguards in which the security and salvation of human society must find rest. Therefore, it is necessary that, in these sorrowful times of the Church, the most holy custom of the Rosary of Mary be diligently and piously observed, especially because such prayers, being composed in such a way that they recall all the mysteries of our salvation in order, are most fitting for fostering the spirit of piety. And with regard to Italy, the most powerful protection of the Virgin must now be implored through the prayers of the Rosary, because a pestilence is present, rather than impending, and has surpassed the limits that nature seemed to have set, and has spread throughout the most famous port of Grallici Bay, and thus throughout the neighboring regions of Italy. Therefore, we must flee to Mary, to her whom the Church rightly and deservedly calls salutary, beneficial, and life-giving, so that, willing to offer her most acceptable prayers, she may bring us propitious help and drive the impure pestilence far from us. Therefore, as the month of October approaches, the month in which the sacred feasts of the Virgin Mary of the Rosary are celebrated throughout the Catholic world, we have decided to repeat this year all that we commanded last year. We therefore decree and command that, from the first day of October until the second day of the following November, in all churches, chapels, and public places dedicated to the Mother of God, or in other places chosen by the Ordinary, five decades of the Rosary, with

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the Litany, be recited daily: if this is done in the morning, it should be performed among the sacred prayers; if in the afternoon, the Blessed Sacrament should be exposed for adoration, and then those present should be duly cleansed. We also desire that the Sodalities of the Most Holy Rosary, wherever civil laws permit, hold a solemn procession for the sake of public religion. In order that the treasures of the heavenly Church may be opened to Christian piety, we grant the same indulgences that we granted last year.

[*Latin ed. p. 51*]

We renew the Encyclical M. To all, therefore, who during these days have participated in the public recitation of the Rosary, and have prayed according to Our intention, and also to those who, for a legitimate reason, have privately performed these acts, We grant, each time, an indulgence of seven years and seven quarantines before God. But to those who, during the aforementioned time, have recited the Rosary at least ten times, either publicly in the churches, or for just reasons within their homes, and have been absolved of their sins through confession, We grant a plenary indulgence from the treasures of the Church. We also grant this most complete indulgence and remission of penalties to all those who, on the feast of the Blessed Virgin Mary of the Rosary, or on any of the following eight days, have cleansed their souls of their stains and have piously celebrated the divine mysteries, and who have also, according to Our intention, prayed to God and to His most holy Mother in some sacred place. Finally, desiring to help those who live in the countryside and are occupied with agricultural work, especially during the month of October, We grant that all that We have decreed above, together with the indulgences pertaining to the month of October, may be deferred, at the prudent discretion of the Ordinary, to the following months of November or December. We do not doubt, Venerable Brothers, that these Our endeavors will bear abundant and fruitful results, especially if what We plant is watered by your care, and may God bestow upon them an increase through the bounty of His graces. We are certain that the Christian people will heed the words of the Apostle, with that faith and piety to which they have given such ample proof in the past year. May the Heavenly Patron, invoked through the prayers of the Rosary, be propitious, and may she grant that, with the divisions of opinion removed and the Christian religion restored in all parts of the world, we may obtain from God the peace that the Church so desires. – Of this auspicious benefit, We impart, with paternal affection, the Apostolic Blessing to you, to your clergy, and to the people entrusted to your care. Given at Rome, near St. Peter's, on the 30th day of August, in the seventh year of Our Pontificate. LEO XIII.

[*Latin ed. p. 52*]

52 FROM SESSION 8 OF THE CONGREGATION OF THE COUNCIL

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OF LAVALLEN. RESOLUTIONS OF Lie, February 16th and April 5th, 1884. SUMMARY OF FACTS. The priest, Iouanne, decided to open a school at his own expense in the parish of Montreuil; and to entrust it to a pious Congregation of Sisters for the religious education of youth. Furthermore, he intended to offer the sum of 20,000 livres to the Congregation of Sisters of the place commonly called Briouze; namely, 10,000 livres immediately, and 12,000 livres to be paid in installments, upon the mutual agreement of the parties, and thereafter, in installments, to complete the aforementioned sum. But later, changing his plans, he decided to build the school and the house at his own expense, and to give 4,000 livres to the Nuns, when they first assumed the teaching duties, and 10,000 livres after his death. Several times, Francis urged the Mother Superior of the same Congregation to accept the donation. Indeed, a proposal for the donation was already in preparation, in which Francis, in addition to building the school at his own expense, and granting 4,000 livres immediately, also promised the Sisters the sum of 10,000 livres to be paid after his death. Moreover, for greater security, Francis had entrusted the same sum to the Marquis of Quatrebarbes, so that, after his death, he would give it to the Sisters. Initially, the Mother Superior of the Congregation seemed inclined to accept the donation; and the school, which had already been built, especially through the efforts of the Parish Priest of Monstroliensis, who played a significant part in this matter, was prospering under the care of two of the Sisters. However, the Bishop of Sagiensi,

[*Latin ed. p. 53*]

LAVALLEN. Fifty-three *livres* having been requested, the lady presiding refused the donation proposed to her. Meanwhile, Francis, greatly concerned about the stability and perpetuity of the school, considered making another donation. Hence, having sought the advice of the General Vicar, "Wicart, who moreover had stipulated all the conditions of the new donation," he transferred the school, together with the sum of 4,000 *livres* for the construction of the church of Monstrol, to the administrators thereof, through a public instrument on March 12, 1877; in which, however, not a single word appeared concerning the sum of 10,000 *livres*, to be paid after the donor's death. With matters thus standing, on March 6, 1878, Francis was struck by a cerebral congestion, and on October 23 of the following year, 1879, he passed away. Upon Francis's death, the Count de Quatrebarbes, brother of the deceased Marquis, and the Count de Reau, who knew the deceased's will well, requested his brother Charles, who was also the parish priest of Argenton, to show the documents in which he believed the executors of the will were to be named. But Charles refused, claiming that there existed a will of the deceased brother, drawn up in April of 1878, at the request of the public notary Richard, in which, revoking all previous dispositions, he himself was established as the heir, free from any condition

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or burden. Despite these circumstances, the Count de Quatrebarbes greatly endeavored to obtain the payment of 10,000 *livres* from Charles: first, because the will, being drawn up by a person lacking intellectual faculties, should be considered null; and second, because, even if it were valid, Charles had succeeded to the obligations of his predecessor. But all efforts were in vain, because Charles not only refused to submit the matter to an arbitration decision, but also wished to prosecute the Count before the civil court, in order to compel him to return the 10,000 *livres*, which Francis had entrusted to the Marquis de Quatrebarbes for investment purposes, of whose sons the Count was the administrator. After these events, the Count de Quatrebarbes immediately filed an appeal.

[*Latin ed. p. 54*]

To LAVALLEN, eight [documents] were sent to the Sacred Congregation [of the Holy Office] in order to compel Charles to pay the sum of 10,000 livres, benefiting the local school of Montreuih, with all judicial proceedings, if any exist, suspended until the resolution of the matter. The Bishop, following custom, dismissed Charles's objections, in which he asserts that he recognizes no other will than the solemn one of April 27, 1878, in which, after revoking all previous dispositions, he himself is named heir, and in which no mention is made of the appointment of the Count of Quatrebarbes as testamentary executor. He further adds that he is not bound by the requested payment, and that the sum of 10,000 livres, lent to the Marquis of Quatrebarbes, has no connection with the aforementioned school, but must be paid to him in order to satisfy obligations imposed upon him by his brother. The Bishop expressed his opinion in favor of Charles, for whom there is a will; while the Count presented no proof to demonstrate the intention of Francis to give, after his death, 10,000 livres. Furthermore, almost all those who had knowledge of this matter are now deceased.

A Synopsis of the Arguments:

THOSE WHO APPEAR TO BE ADVOCATING FOR THE SCHOOL.

Those who defend the rights of the parish school of Monstrol argue that the sum of 10,000 livres should be paid by Francis's heir, John, the parish priest of Argenton, because the aforementioned Francis, while still enjoying the benefits of this life, irrevocably promised this sum, and guaranteed that it would be given to the school after his death. To prove this, he presented, above all, the testimony of the current parish priest of Monstrol, whose deposition should be considered of great value; for he had a particularly important role in this matter, as it is known that Francis confided his intentions to him above all others, entrusting him alone with the construction of a new building for the use of the schools, and appointing him as the arbiter

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in this matter, as evidenced by a letter from Francis.

[*Latin ed. p. 55*]

LAVALLEN, December 20th, 1869. Furthermore, the parish priest of Monstroil, when questioned regarding the matter, under oath on March 7th of the year 1883, affirmed that the agreement concerned not any arbitrary promise, but an irrevocable promise. For he said that, if there had been any doubt to the contrary, he would not have expended so much effort in acquiring the land, and in constructing the building for the school, which could not have existed once the endowment had already been received. Moreover, when Francis learned that the law permitted ecclesiastical foundations to accept buildings for schools, he wished to avail himself of this law, and therefore, he again promised to give, after his death, 10,000 livres. The parish priest of Monstroil also presented other testimonies to confirm this. The testimony of the directress of the Congregation of Sisters, commonly known as Notre Dame de Briouze, was also taken, to whom, at the urging of the parish priest of Argenton, the care of the schools had been initially entrusted, although they subsequently sent word that they could not accept the task, because they could not immediately receive the sum of 10,000 livres, which the founder had proposed to give to the school after his death. Indeed, the aforementioned directress expressly stated that, for this reason, she had sent her Sisters to oversee the schools established by Father John, because she considered the promise to be irrevocable. The declaration of the Councilors of the Fabric (ecclesiastical council) also corroborates this, who, under oath, unanimously affirmed that they had accepted the donation of the school building, because they were aware of the other obligation concerning the payment of 10,000 livres after the death of the donor. The testimony of the President of the Monstroil municipality also agrees, who stated that he had given his consent to the Monstroil Fabric councilors to accept the donation offered by the Reverend Francis John, after having been informed that, by accepting the donation, the donor was obligating himself to give another 10,000 livres. Finally, Aloysius Quatrebarbes, son of the Marquis, confirmed this, to whom the parish priest John had lent money, which, upon his death, he was obligated to bequeath to the pious work. Aloysia de Quatrebarbes also expressed herself in a similar manner, who, when questioned on this matter on June 10th, 1883, gave testimony.

[*Latin ed. p. 56*]

56. LAVALLEN. The irrevocability of the promise, which is the subject of discussion, has been observed not only from the testimonies of witnesses, but, what is more, from the very letters of Francis to John. Indeed, in one of these early letters, while Francis wrote to the parish priest of Montrolier about the silence of the Mother Superior of the religious community of

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Notre Dame, to whom the direction of the schools should have been entrusted, referring to the aforementioned sum of 10,000 livres, he added: "The promise I have made, and my will, guarantee the security of this matter." In another letter, he assured the aforementioned parish priest of Montrolier that the aforementioned sum was readily available and had been placed in a safe location. And in a letter dated August 21, 1871, he wrote to the same parish priest of Montrolier: "For the present, I donate 10,000 livres; I will give an equal sum upon my death." Therefore, the speaker observes, no one of sound mind can doubt that the obligation by which Francis bound himself was irrevocable. Hence, it is not surprising that the new parish priest of Montrolier eagerly undertook the work of building the house, a project that, had the promise been revocable, would never have been undertaken, and much less would the councilors of the Fabric have urged the acceptance of Francis' donation; for, as the parish $\text{parish priest of Montrolier himself testifies, such a donation, far from being useful, would have proved both useless and even harmful over time. Given these testimonies regarding the irrevocability of the promise, nothing is more in conformity with equity and natural law than to preserve words and promises. *arg. leg. 1. in prin. ff. de pactis « ibi »* For what is more fitting for human faith than to keep what has been agreed upon between individuals? Therefore, it follows that, after the death of Francis, his assets, in accordance with his will, passed to Charles, and that, as the heir of the promisor, Charles is bound to fulfill this obligation. Indeed, it is well known that all rights, both active and passive, are transferred to the heir, who is in a better position.

[*Latin ed. p. 57*]

LAVALLEN. It should not be the case that a condition is void simply because the person who was subject to it has died; nor does a change of person alter the nature of obligations: see the text in leg. 2, ff. de Verb. Obligat. Constant. Vol. Decis. 269 n. 7; Rota Recent, decis. 46 num. 25 part. 5 tom. 1 decis. 413 part. 9 tom. 2, and elsewhere. After these points, Charles insists that Francis's promise must be considered null and void, because he himself had changed his mind before his death. He argues that the nature of contracts of this bilateral type is such that no one can renounce an obligation once established, without the consent of the other party. This is established by law, as in title 5 C. de obligat, and by the act "ibi" as at the beginning, everyone is free to enter into or not enter into a contract; therefore, once an obligation has been established, no one can renounce it without the consent of the other party. Therefore, you must understand that you cannot, once bound by a voluntary obligation, withdraw from it without the consent of the other party. This is even more to be held true, especially when, as in this case, the original matter is no longer present, and the other party has already fulfilled its obligation, or when the change of

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plan harms the other party; as stated in Rule 75 ff. de R. I. "ibi," no one can change their plan to the detriment of another. This is consistent with Rule XXXIII de Reg. Iur. in 6. "ibi," which states: "No one can change their plan to the detriment of another." Furthermore, the fact that the original matter is no longer present, and that the other party has fulfilled its own obligation, is clearly demonstrated by the case of the school, which, for many years, was brought to a successful conclusion through the diligence and care of the new parish priest of Monstro, who added that he undertook and completed this work because he knew that the aforementioned sum of 10,000 livres, promised by Francis, would be available to the school of Monstro after his death. However, the change of plan by Francis certainly harmed the school, because, in the absence of the aforementioned sum of 10,000 livres, the school has no other means of providing for its maintenance. This situation would cause great harm.

[*Latin ed. p. 58*]

58. LAY ALLEIN. It is evident to all, especially those devoted to religious education, within the parish of Montreuil, that there is a dispute. It demonstrates that the offense must be upheld, based on a testimony obtained from Charles, who seeks to free himself from this obligation. Since the validity of the will is admitted, it is asserted that the testator's will does not possess such efficacy as to destroy the obligation, which has the nature of an irrevocable donation inter vivos. Furthermore, the objector adds that the will is to be considered among fables, since, according to the testimonies of many witnesses, without any exception of the elders, it is clear that Francis, from the day he was afflicted by that fatal illness until the day of his death, was unable to express his thoughts with words. And this, besides other trustworthy witnesses, was unanimously sworn by the three physicians who cared for the sick Francis. Furthermore, Charles vainly attempts to demonstrate that there is no connection between the debt of the Marquis de Quatrebarbes or his heirs, and the matter of the school of Montreuil; since, from what has been stated above, it is clear that Francis stipulated that no other sum of money should be used to benefit the schools of Montreuil after his death, than the sum of 10,000 livres, which he had lent to the Marquis de Quatrebarbes. Finally, the advocate continues, Charles's case is not improved by the fact that, as he himself asserts, the expenses incurred by Francis while he was still alive, almost reach the sum of twenty thousand livres, for the erection of the schools which Francis had promised. The advocate, indeed, sought to refute this offense, noting that Francis intended to provide other funds for the schools of Montreuil, besides the aforementioned sum of 20,000 livres, half of which he had placed in the hands of the Marquis de Quatrebarbes. And, setting aside all other matters, it undoubtedly follows from a letter written by Francis on August 27, 1871, to the parish priest of Montreuil. Moreover, not all expenses were

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incurred for the acquisition of land, for the house to be adapted for the use of the schools, and for...

[*Latin ed. p. 59*]

LAVALLEN. It has been shown that 59 livres were paid solely from the funds of Francis; but it has also been demonstrated that the parish priest of Monstreuil himself contributed a considerable sum, both from his own resources and from funds collected among his parishioners, to complete the work. Therefore, as has been made manifest both from the evidence presented thus far and from the legal arguments, the promise of 10,000 livres, which was to be given to the school of Monstreuil after the death of Francis, was irrevocable; and since the objections raised by Charles to deny this irrevocability have been refuted, the advocate concluded that the aforementioned sum of 10,000 livres must be paid by Charles, as the heir of the aforementioned Francis, to the school of the parish of Monstreuil. WHICH APPEARS TO BE OPPOSED TO THE SCHOOLS. ON THE OTHER HAND, Charles maintained that he was in no way bound to pay the aforementioned sum of 10,000 livres. Indeed, any intention or will that his deceased brother Francis may have had is certainly declared invalid by the solemn will of April 27, 1878, dictated publicly by the testator himself. For in this will, Charles is appointed the universal heir, and all previous wills are revoked. It has been established in law that a later will, with a general clause, invalidates all other dispositions, notwithstanding any other wills; L. Si quis in principiis de testamento, et ibi Bartolus, et DD. de leg. 3 Card. in Clementinas, 4, in 3 qu. de sepulturis, and widely, Barbat. in Cap. Cum esses, col. 37 de testamento. Nor can the exception of the nullity of the will help the Count, since, as he himself asserts, the testator was not of sound mind at the time of the will's creation. However, this is found to be false from the very testimony of the public notary, who states in the will itself that, although Francis was ill in body, he was of sound mind. Furthermore, the testimony of the Notary, because of his fidelity, is approved by law and by the testator, and must be duly considered; Bald, in L. Senium, n. 27, C. de transad.; Buratt. dec. 211, n. 7.

[*Latin ed. p. 60*]

60 LAVALLEN, and Dec. 246, n. 3; De Luca, de testamenti, disc. 39, n. 7. It should not be surprising that Francis was of sound mind at the time the will was made, since even in the month of March, at the beginning of which he was struck by illness, he was able, although lying in bed as a paralytic, to receive the Eucharist, and after gradually regaining his strength, he was even able to go to Church, and from May 11th, he attended the Holy Sacrifice several times a week, to the great edification of the faithful; and some of them, influenced by Charles, testify that Francis was indeed of sound mind at that time, and that he often used to walk about the countryside

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and visit the inhabitants. These things, indeed, could only be done by those who possess the full faculties of the mind. Furthermore, no evidence to the contrary can be provided by the testimony of the doctors from Aversa. For Charles observed: "From the fact that the doctors testify that Francis was not of sound mind at the beginning of March, it cannot in any way be concluded that he was not of sound mind on April 21, 1878." Moreover, he adds regarding the value of the individual testimonies: "Three doctors were called to treat the ailing Francis: Dr. Bondu, Dr. Sauvé, and Dr. Ioussellin. The methods used by Drs. Sauvé and Ioussellin were applied only for three days, at the beginning of the illness, namely on the days of March 7, 8, and 9, 1878. Therefore, they could not testify about the condition of the patient except during those days; for after that, they did not see Francis. As for Dr. Bondu, his methods were indeed used until the end of March 1878. But his testimony cannot be considered free from suspicion. Indeed, it must be entirely rejected because of his very close friendship with the people of Quatrebarbes." Therefore, since the aforementioned will is complete in every respect, it follows that after Francis' death, Charles inherited all of his brother's goods, so that he could dispose of them as he pleased. However, the obligation of Charles to pay the sum of 10,000 livres to the school cannot be derived from any prior obligation of Francis. For Charles, above all, is...

[*Latin ed. p. 61*]

LAVALLEN. He presents no written agreement, nor any document whatsoever, to prove the validity of his predecessor's obligation. Moreover, the Bishop also supports him, stating: "The Count has not presented me with any legal proof that demonstrates Francis's intention, after his death, to donate the sum of 10,000 livres." Furthermore, it is well known in law that an obligation cannot be imposed unless there is certain knowledge of it; *L. quidquid ff. de verb. oblig.* It is also not to be presumed that Francis did not wish to mention the aforementioned sum in the public instrument of the donation made on March 12, 1877, because the laws of France prevented it. Indeed, Francis could have left a trace of his will in the episcopal archives or in some private written agreement; as he had proposed to do in the previous donation intended for the Sisters of Briouze. But not only is there no private written agreement present from which it can be ascertained that Francis made an irrevocable promise or donation; but neither the Bishop, with whom he had spoken on several occasions, nor his Vicar General, Wicart, whose counsel and care were involved in the drafting of the public instrument of the donation, ever knew of Francis's obligation. Therefore, since the testator's obligation has not been proven, it seems reasonable to conclude that Charles is not bound to pay the aforementioned sum of 10,000 livres. After these points, the documents presented by the opposing party appear to be of no importance whatsoever in supporting Francis's obligation. For these undoubtedly refer to negotiations that took place

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in the first donation, which, having been annulled due to the nuns' non-acceptance, could not create any obligation. Since Francis's donation was not accepted by the Sisters, it could not create any obligation. Therefore, the documents presented by the opposing party, since they refer to this donation, are valid to prove Francis's intention to donate the aforementioned sum, but not an irrevocable promise or donation. It is well known that...

[*Latin ed. p. 62*]

62. LAVALLEN, indeed, is correct in stating that a donation not accepted does not, either in law or in fact, obligate the donor, and that the donor can change his mind. This is according to De Angelis in *Praelectiones Juris Canonici*, Book 3, Volume 24, on donations, number 1. For, from a mere and simple promise, no obligation arises on the part of the promisor, nor can any action be brought against him; Covarruvias in *Capita*, Part 2, § 4, number 15; Bartolus in *Leges*, Book 1, § *pactus*, number 16 and following, on obligatory words, number 7; Lugo on Futilities, Disputation 23, number 35; the Rota in Decree 526, number 3, *coram* (before); and in Decree 1, number 2, *coram* Ratto. Nor should it be said that the administrators of the factory in the year 1877 accepted the donation of Francis because they believed that his promise to the Sisters had been made irrevocable. For, even if this were the case, no one can fail to recognize that any promise may be set aside if circumstances are overlooked that were present at the time of the promise, and if the things remain in the same state, so that if any change occurs, the promise itself is immediately nullified, as is stated by the Rota in Decree 355, number 7, *coram* Riminaldo, and in the Roman transaction concerning nullity or remission of March 14, 1842, *coram* De Retz, § *Quod*. Furthermore, since the administrators of the factory could, before accepting the donation, have obtained some document, even a private one, for the security of the promise of Francis, if it is truly the case that his intention remained the same even when he donated to the factory, they are to blame if they did not do what they could and should have done: for negligence or fault is imputable to each person; *Locus* in condemnation, § *unicuique*, and following, on the law; Chapter on delay, Book 6; *Locus* on theft, Book C; *Locus* on completed transaction, Book C on transactions. However, Charles states that the factory has sufficient income, saying: "The factory in the place of Montreuil enjoys an annual income that exceeds the sum of two thousand two hundred livres." But it is further established that Francis revoked the promise of 10,000 livres after his death. This is proven not only by the silence of the will, but also by...

[*Latin ed. p. 63*]

LAVALLEN. 63. Content with this vocation in the same matter, and also with those things which Francis said in a most private conversation with Charles, the heir, on May 24, 1879, in which he revealed his intentions and

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recommended further actions. Indeed, in this very private conversation, Francis reclaimed that sum of 10,000 livres which, for security's sake, he had given to the Marquis de Quatrebarbes, and he wished it to be used for other purposes. This revocation is also attested to by the public scribe Richard, who drew up the public instrument of the donation. Finally, even if, by an absurd hypothesis, the prior promise of 20,000 livres were to be considered irrevocable, it seems that Francis had already sufficiently and more than sufficiently satisfied the Marquis. For he spent on pious causes during his lifetime more than 17,000 livres; a sum which, exceeding the promised 10,000, is clearly greater. It is, however, more appropriate to note that the sum given to the Marquis de Quatrebarbes by Francis has no connection with the school, and is owed to Charles. But it must be observed above all that this sum was not 10,000, but 12,000 livres, which is proven by two authentic agreements by which it was lent. From these, everyone can easily understand that Francis did not impose any obligation upon himself regarding the lending of this sum. But if anything else existed, from what has been said above, it is clear that it was, not only implicitly, but also expressly, called into being. Therefore, Charles can not only reclaim this sum, but indeed he must, since Francis intended it for other purposes. For it is the law to hold the will of testators to be valid, L. Verbis 12 ff. de verb. signi f., and Novel. 22 Cap. 2, and that the highest human wills, especially pious ones, are to be most strictly observed, L. 1. S. de SS. Eccles. Clem. Quia contigit 2 de relig. domib. Having considered these points on both sides, the purpose is to clarify the matter.

[*Latin ed. p. 64*]

64 LAVALLEN. A question arises: Whether the sum of 10,000 livres should be delivered to the school of Montreuil in this case. RESOLUTION. The Sacred Congregation, under the date of February 1st and 6th, responded: Deferred; but, after new facts were presented with documents, both from the part of the parish priest of Montreuil, and from the part of the Superioress of the Religious community of Briouze, the same Congregation, under the date of April 5th, 1884, judged it fitting to respond: Affirmative. FROM WHICH [facts] ARE GATHERED: I. That nothing is more fitting to equity and natural law than to observe words and promises, or those things which have been agreed upon between the parties. II. That the nature of bilateral contracts is such that it is not permissible for either party, without the consent of the other, to renounce the obligation. III. And this is all the more true when one party has already fulfilled its own obligation; according to rule 75 ff., no one can change their mind to the detriment of another. IV. That the obligation contracted in this matter was seen by both parties; and that the house had already been constructed for the schools, indicating that the matter was no longer whole, and that one party had already fulfilled its own obligation; but that

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the change of plan on the part of Francis gravely prejudices the schools. V. That an obligation which takes on the nature of an irrevocable donation *inter vivos* cannot be destroyed by a properly executed will by the testator himself. VI. It may also be doubted whether the testator was of sound mind when he made the will; because it appears that, being afflicted by a deadly illness, he was no longer able to express himself clearly with his words until the end of his life.

[*Latin ed. p. 65*]

65. REGISTRY OF RESTORATIONS TO THE FULL EXTENT AND OF PATRONAGE RIGHTS. April 10, 1884. SUMMARY OF FACTS. In the parish church of Saint Lucy, located in the place commonly called "delle Franche" within the diocese of Castrimaris, which possesses an annexed benefice with the care of souls, there has, from ancient times, existed a right of patronage belonging to the very ancient and noble family of d'Avitaia. Therefore, although today the title establishing this right of patronage can no longer be found, perhaps lost due to the vicissitudes to which the Litherensis Curia was subjected, under whose jurisdiction the aforementioned locality previously existed; nevertheless, it is known that several members of the aforementioned family have permanently participated in the presentation of rectors to that church. Furthermore, there were also simple benefices established in the same church, pertaining to the altars of Saints Cosmas and Damian, Saint Barbara, and the Holy Trinity, which, however, were not subject in the same way to the right of patronage of the family of d'Avitaia. For the benefices of the Holy Trinity and Saint Barbara, other families held a share. After the seizure of all ecclesiastical goods by the Government, Francisca, Attilius, and Aemilius d'Avitaia appealed to the civil tribunal of Naples, in order that it might be declared to whom and in what quantity the right pertaining to each benefice subject to the patronage of the family of d'Avitaia belonged, so that they might then proceed to reclaim the goods. On June 21, 1871, a judgment was rendered by the same tribunal, in which it was determined to what extent each party was entitled. This judgment was subsequently confirmed by Attilius d'Avitaia and Francis Vitólo through a private agreement concluded on March 9, 1874. Records, Volume XVII, section IV, page 5.

[*Latin ed. p. 66*]

66. AT THE SHRINES. After these, the patrons claimed their due proportion of the benefits, with only the benefice of Saint Lucy remaining immune from such division. Furthermore, when this benefice became vacant in December of 1878, the patron Attilius d'Avitaia, descended from the male line and now deceased, presented the actual economist, the Reverend Agnellus Vanacore, within the legally prescribed time. On the other hand, at

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almost the same time, Franciscus Vitólo, son and heir of Francisca d'Avitaia, Agathinus Previtera, married to Clelia d'Avitaia, and their son Alphonsus, believing themselves to have the right to present to the same benefice, as they were descended from the female line of the d'Avitaia family, or at least in virtue of the aforementioned agreement, presented the Reverend Vincent Vinnaccia, and asserted that they should be granted precedence over Attilius because of their greater number of votes. To this claim, Icilius and Albertus d'Avitaia, sons of the deceased Attilius, objected, asserting that the benefice of Saint Lucy belonged by agnatic right. The question was first considered by the Curia of Castrimaris, which on July 8, 1881, rendered the following judgment: "By our definitive judgment, we declare and pronounce that the parochial Church of Saint Lucy in the Territory of France has been and is under the patronage of the Family and Agnatic favor of the Family and House of d'Avitaia, exclusively; therefore, no right whatsoever pertains to the aforementioned parochial Church with respect to the aforementioned lords Franciscus Vitólo d'Avitaia and Agathinus Previtera, and his son Alphonsus, concerning other relatives or heirs."

However, since this judgment did not bring satisfaction to the defeated parties, they immediately proposed an appeal to the metropolitan Curia of Surrentine, which, having accepted the appeal and conducted the proceedings according to proper procedure, confirmed the judgment of the Curia of Castrimaris. Vitólo and Previtera then appealed from this judgment to the Holy See, seeking a new review of the case, or for restitution to their former state; because a res judicata had arisen from the double, concordant judgment, and the rule-

[*Latin ed. p. 67*]

CASTRIMARIS 67. The appellation, indeed, could not have any further validity, unless through the means of restitution in integrum. Disputation on the Synoptic Matter. In favor of the judgment of Sorrento, it was noted that restitution in integrum should be denied in this case. For the principle of law is that there should never be a place for the benefit of restitution in integrum, unless it is clearly established that there was an injustice in the adjudged matter, or that the judgment itself is null, as the Text states in Chapter 1 concerning restitution in integrum; L. 4 §. Condemnatum ff. de reiudic. L. 17 ff. eod. tit. Leg. g. 1 et 2 ff. de Rest, in integri s. Rota everywhere, and it is stated more clearly in the Gregorian Code promulgated on November 10, 1834, § 1057 and 1058. Furthermore, there is no question, nor can there be, of the nullity of the judgment of Sorrento, since the process was completed in accordance with the prescriptions of canon law. Nor can the judgment be demonstrated to be evidently unjust, since no argument is presented by the opposing party to demonstrate that any document presented therein was tainted with falsity; nor is any public or private instrument again presented from which it may be established that

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the circumstances of the case have changed, and that new laws have been enacted; nor, finally, has any law been disregarded or violated. Therefore, it must be concluded that there is no reason in this matter for which restitution in integrum should be granted. And it is worth remembering that there is a great difference between restitution in integrum requested against a judgment resulting only from a failure to appeal within the legally prescribed time, and that requested against a judgment rendered by conforming judgments; for the former is recognized by law and admitted by it, while the latter is not recognized and is prohibited by law. Therefore, in this latter case, greater caution must be exercised, and restitution in integrum is more difficult to grant, so that, as De Luca states in his work on Judgments, book 3, chapter 38, number 19: "when nothing is presented concerning the JURA AGNATORUM."

[*Latin ed. p. 68*]

68. "It must be understood that, in order for restitution to be granted, it must be demonstrated that those from whom the injustice was taken have already been removed, and that the matter has been settled; although such cases may present a situation where the cause is so doubtful that, perhaps, it would be more probable to judge in favor of one side rather than the other, nevertheless, this is not sufficient grounds for granting restitution in integrum."

"Therefore, restitution in integrum in such a case should be entirely denied, and this even more so because we are dealing with a matter that has been definitively decided upon by a double, concordant judgment, as the law establishes, which we follow in Romae, as stated in the *Institutes of the Devoted*, Canon 3, Title 15, concerning Appeals, note 5, paragraph 7.

Furthermore, even if, for the sake of argument, it were conceded that restitution in integrum might be granted in this case, it nonetheless appears certain that the judgment of the Surrentine court should be upheld, since nothing further can be added to establish the quality of the patronage right in question. Indeed, there are not only presumptions but also clear indications of this quality.

It must be remembered first that we are dealing with the patronage right of a noble and ancient family, which is therefore considered to be directly aimed at preserving the memory of the family and its lineage, as stated by Lotter in *De Re Beneficiaria*, Book 2, Question 11, paragraph 150; Piton, *De Controversiis Patronatus*, Allegation 100, paragraph 199; and the Rota, Decree 126, paragraph 7, part 1, recent.

And De Luca, in his work *De Iure Patronatu*, discourse 23, speaks so eloquently on this matter: 'I have generally been more inclined to favor the familial quality, influenced by the common practice, at least in Italiae, where the foundations of patronage rights are often established, not only for piety, but also (and perhaps more so) for ambition and honor, so that

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the memory of the founder may be preserved, and so that the justification of nobility may be more easily achieved after a long time, or so that the identity of the family, or its descendants, may be proven, as frequent experience demonstrates. Therefore, it seems more probable that the founder intended this familial quality, rather than a hereditary one, through which the memory of the founder is diluted for a short time, and this is the purpose of this right."

[*Latin ed. p. 69*]

CASTELMARIS 69 makes a transfer of the honorary right of patronage to external hands, contrary to all probability. Thus, he also speaks in Disputation 25, number 4, and more clearly in Disputation 24, number 14. Although, in general, the right of patronage may be considered hereditary by reason of the lack of a title of foundation, in this case, the presumption seems to favor agnatic quality. However, in this matter, not only is there this slight and presumptive proof of agnatic relationship, which by itself would be sufficient to exclude that simple presumption of the hereditary quality of the right of patronage, as stated by De Luca in Disputation 23, number 13; Piton, Disputations 53, number 14; the Rota in Florence concerning Ricasoli, Lancellotti; and in Burette, decrees 183 and 166, part 6, but there are also very clear indications which seem undoubtedly to prove that the right of patronage is agnatic. Firstly, as it is known from the Bulls relating to the institutions, not only by a notable, but by a very long period of time, that is, from the year 1504, persons from the noble family of Avitaia have constantly and exclusively presented candidates for the parochial benefice of Saint Lucy, with the declaration that even before and from time immemorial, they from the same family have always exercised the right of presenting the parish priest, and have been patrons, without ever mentioning, or making any distinction, of lineages, or hereditary portions, or of proximity, nor has any external person, or one connected by kinship, been admitted, or at least recognized in their own right. Indeed, this immemorial observance is a certain indication of agnatic right in the matter of patronage, which is well known in law. Let us hear Reiftenstuel in Book 3, Decrees, title 38, number 48: "A familial (right of patronage) is presumed if" in its provisions there has always been mention of the family "and of descent, and never of hereditary quality, or" when for one hundred years no external person has presented [a candidate]"; and the Rota in the aforementioned Florence concerning Ricasoli, Buratt, decree 173, number 22; decree 183, numbers 17 and following; Royas, decree 446, number 8; Cels, decree 106, numbers 7 and 8; decree 166, number 14, part 6.

[*Latin ed. p. 70*]

70. Furthermore, in all and each of the Bulls of institution pertaining to the benefice of Saint Lucy, the patrons presenting the same are invariably

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called by the name of the family and house, or the Casato d'Avitaia. This is also confirmed both by the ancient and approved historical accounts of that town, by public documents, by decrees of the Curia, by edicts, by the sworn testimonies of witnesses, and, above all, by the visitations of the Ordinaries. Moreover, there are still more sentences from the Curia Litherensis, recorded in the acts, which declare that the patrons presenting the same must be maintained in possession of the right to present the parish priest of Saint Lucy. Furthermore, all these things, while on the one hand excluding the hereditary quality of the patronage, on the other hand seem to most certainly indicate and declare that it is agnatic. Indeed, Pitonius, in *De Controversiis Patronatus*, Allegation 77, number 11, states: "The word 'family,' which means the same as 'agnatic kinship,' as is held in the matter of patronage in Italy, as Cardinal De Luca states in *De Jure Patronatus*, discourse 26, number 6." There, he adds: "The word 'family,' standing in common usage in Italy, etc., is also in this matter of patronage, or benefice, often understood in a more restricted sense, namely, as agnatic kinship." This is confirmed by the Rota, part 4, volume 1, decree 287, number 12; part 12, decree 204, number 5, etc., as well as by the Sacred Congregation of Councils, specifically in the matter of patronage in Firmana, March 29, 1862, and in other matters of patronage, on August 22 and September 22, 1866. And this is even more so, because in the case of the word "family," the specification of the surname is added. Indeed, Pitonius, in Allegation 100, number 93, states: "It is easier and without any difficulty, when, in addition to the name of the family, the adjective of the surname is present... for in this case, only the agnates are exclusively included." As the same Cardinal De Luca states in *De Jure Patronatus*, discourse 26, number 8, second paragraph, where he adds that, with such an adjective present, there seems to be no difficulty in including only the agnates. Cardinal Ant. de Lue, in *Ad Orat. Discept.*, 258, number 17, second paragraph, states this more certainly, and in *Bononien. Fideicommissi de Mazzolis*, June 22, 1699, §. Also, the case of Ansaldo, and in Ari-

[*Latin ed. p. 71*]

CASTRIMARIS 71 » minen. Iurispatr. 9 Martii 1703 §. Moreover, it is evident from the synoptic table, which is appended to the records, that the patrons, together with their sons, presented themselves for the aforementioned benefice of Saint Lucy; this could not have occurred if the patronage were hereditary, as Gagliardi states in *De Iurepatronato*, Chapter 10, number 15: "The heir of a living father cannot, in any way, be considered his son." And the sons are presumed to present themselves in their own names, unless the contrary is proven. Therefore, Cardinal De Luca, in *De Iurepatronato*, discourse 60, number 14, aptly observes that "Among the circumstances that suggest gentile status or family connection, the simultaneous presentation, of fathers and sons, or of relatives and descen-

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dants, without regard to the order of succession, is generally considered a very effective indication, according to the aforementioned decisions in *Fiorentina de Ricasolis*, Buratt. dec. 166, page 614, cited by Royas, dec. 446, and dec. 162, part 11, *recent*." Furthermore, all presentations were made by the patrons of Avitaia in their own names, and each individually, or all presented themselves as descendants by right of blood; this, likewise, could not have taken place in a hereditary patronage, in which presentations must be made only by branches of the family, as expressly stated in Clementine, *Plures* 2 *De Iurepatronato*, and as Pitonius recounts in *Allegationes*, 10, number 7; *Rota*, part 4, volume 1, dec. 77, number 1, part 7, dec. 275, number 3, etc.; this circumstance, in this case, constituted an irrefutable argument of family connection, as the *Rota* holds in dec. 220, number 12, part 11, and Pirol, dec. 159, number 1, and following, along with others, in *Commentaria Cappellaniae*, 31 Martii 1702 §. *Exordiendo cor.* Tremolile. Therefore, since this method of presentation in the benefice of Saint Lucy has persisted from the beginning to our times, as sufficiently demonstrated by the numerous documents appended to the records, it is reasonable to conclude that the patronage, of which we are speaking in this matter, is agnatic, and consequently, the right of presentation pertains only to the agnatic members of the family of Avitaia, to the exclusion of cognates.

[*Latin ed. p. 72*]

72. CASTRIMARIS. After a brief consideration, based on an absurd hypothesis, that there might still be some doubt regarding the nature of the right of patronage, it is certainly necessary to resolve this matter definitively. And indeed, although, in the final collation of the aforementioned benefice, no presentation took place due to the favorable intervention of the Reverend Balestrieri, because the opportune time for presentation had passed; nevertheless, from the documents presented, it is clear that, since the year 1819, in several vacancies of the benefice, only the Agnates of the family of Avitaia have always exercised the right of presentation, without any admixture of females or other relatives. Truly, the value of the final collation when it comes to the quality of the right of patronage is something that no one can fail to see. Pitonius, in *Controversiae de Patronato*, Allegation 100, number 155, is a witness to this, where he speaks of a similar case, stating: "I have seen" a case concerning the benefice of Caserta, on March 27, 1715, confirmed by Scotto, and on June 15, 1716, confirmed by Althan, and on May 13, 1718, confirmed by Herrera; "where, although the presumption was for a hereditary right, according to Clement, more authors on patronage, however, I found that in the final collation, several females, all of the family of Morroni, were presented, with the expression that the right of patronage belonged to them as a family; and by virtue of this, I obtained the institution in favor of the presented from two surviving

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females of the family, who were presented in the final collation, rejecting the presentation of the heirs and descendants of other females." It is not necessary to have a final collation in which several presentations have taken effect over time immemorial: for the Doctors, when it comes to the Church already subject to the right of patronage, and therefore only prescribed against the patrons, commonly teach that a single act of presentation, with the due time, is sufficient. Barbosa, *ad Conc. Trid.*, Session 25, Chapter 9, *de Reform.*, number 22; Ferraris, *v. Iuspatronatus*, article 1, number 41; Reiffenstuel, *Lib. 3 Decret*, title 38, number 16. Therefore, since all these things appear to be relevant to the matter, it must be concluded that the right of patronage is agnatic.

[*Latin ed. p. 73*]

73. As noted above, this argument should only be considered a subsidiary one, since the nature of such patronage is also clearly derived from the most ancient precedents. Indeed, the difficulties raised by the opposing side, stemming from the fact that women and outsiders have sometimes held a place in presentations, seem to be of no consequence. Since it is frequently the case that only agnates have presented, and that in other presentations they have also generally held the majority, it should not be surprising if, in some nominations over such a long period of time, and on so many occasions, others who would otherwise not have had the right, have been admitted through some tolerance or even through abuse. However, to be more concise regarding women, it should be remembered that they are also admitted by law into the family patronage, provided they are of agnatic lineage and descend directly from males. "For the matter is," says Pitonius in Disputationes, 14, number 14: "There is no difficulty in the law, or in practice, that both men and women should succeed in the law of family patronage, who are always of true agnatic lineage and of the house, even if they have married into another family..." And it is a certain conclusion confirmed in the Rotam, decision 502, number 10, page 18, etc., and in Balneoregien. Beneficii, 21, number 1707, §. Furthermore, before the Reverend Father Dominicus Kunitz, who, when I cited him, affirmed that in the law of agnatic patronage, women are also included; Riccius, Praxis, number 160, number 5; De Luca, de iure patron, disputation 28. Indeed, in the case of women, it is known that those who were never the sole nominators were from the family of d'Avitaia, not only from the appended surname, but also from the clause included in each Bull, which always sounds approximately as follows: "all the aforementioned Lords of the family of d'Avitaia, etc." Nor does the mention of inheritance seem to pose an objection, which occurs only in the Bull of the year 1639 and in another in 1707, where the presenters are called both sons and heirs. Since

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the agnatic nature of the law seems certain in this matter.

[*Latin ed. p. 74*]

74. CASTRIMARIS, the thunderous sound, the hereditary claim is not to be understood strictly as pertaining to the heirs of property, but rather to the heirs of blood, as explained by De Luca in *De Iure Patr.*, disputation 60, number 13. There, it is stated: "Sometimes it has happened that those presenting themselves declared themselves to be heirs, and yet, if other circumstances suggest a claim based on nobility or family status, this has been overlooked, as if the hereditary quality, even when demonstrated in a relative or noble, had not been explicitly stated, as in the case cited by Celsus, decision 106." And so, the Sacred Congregation also considered this in the case of *Iuris Patronatus* on March 21, August 29, 1868, and June 26, 1869. After these considerations, it is also necessary to examine the argument presented by the opposing party in support of a mixed patronage. This can only occur, as Pitonius states in disputation 14, number 16, "when conjectures fluctuate, both regarding hereditary quality and nobility," but not when clear indications of agnatic relationship completely exclude the hereditary quality, as in this case. Therefore, since the agnatic nature of the patronage in question has been proven, it follows that the right to present a candidate for the benefice of Saint Lucy belongs solely to the agnates of Avitaia; therefore, the presentation made by Attilio d'Avitaia, with the support of the priest Agnelli Vanacore, is valid, and the judgment of the Court of Sorrento must be fully confirmed. The opposing party's patron, although warned, presented nothing. Therefore, the following questions were proposed to be resolved: I. Does the case involve causes for restitution in full? And II. Should the judgment of the Archiepiscopal Court of Sorrento be confirmed or overturned in this case?

RESOLUTION. After discussion, the Sacred Congregation, on April 5, 1884, decided to respond:

[*Latin ed. p. 75*]

7. Regarding the first point, it is denied. Regarding the second point, it is considered in the first. From which, the following are deduced:

I. That the benefit of restitution to the original state does not exist, unless the appellant clearly demonstrates the injustice of the judgment; which can be done either by showing that the judgment was based on false documents, or that new and decisive documents have emerged, or that some law has been overlooked and violated.

II. That nothing from all of these has been demonstrated; and therefore, the judgment duly pronounced must be maintained.

S. IACOBI DE CUBA, DISTRIBUTION, March 8, 1884.

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SUMMARY OF FACTS.

In the town commonly called Villa del Cobre, in the diocese of S. Iacobi de Cuba, there exists a certain renowned sanctuary under the invocation of the Blessed Virgin Mary, commonly called "de la Caridad," built with the alms of the faithful, and located four leagues, or twelve thousand paces, from the city. Over this sanctuary, from ancient times, the Chapter of the Cathedral of S. Iacobi has exercised the right of patronage: namely, by appointing a Rector from whom they demand an accounting of the alms collected there, by overseeing the expenses for the construction, and by supervising the lodging for pilgrims. To the sanctuary is attached the cult of the Blessed Virgin Mary, as well as the determination and regulation of the number and form of the solemnities celebrated there. Furthermore, it has been the custom from time immemorial that those who attend these festivities in the name of the Chapter, whether performing sacred duties, preaching, or maintaining order among the large number of pilgrims present, are considered to have a privilege of receiving daily distributions. Moreover, the Canons who approach the aforementioned sanctuary have the right to...

[*Latin ed. p. 76*]

76. Saint James of Cuba: "Those who reside in the aforementioned hospital, where they are fed with the alms of the Sanctuary, receive compensation for the functions they perform, and indeed, they incur expenses for their coming and going. In the year 1877, with the newly established Capitular Statutes, it was prescribed that those Canons who wished to attend the feasts celebrated twice a year in the aforementioned Sanctuary would lose their daily distributions during their absence. Nevertheless, when the Chapter, on the occasion of the repairs to the Sanctuary's building, appointed two Canons to go there to oversee the work, those Canons received all their daily distributions during that period of absence. Therefore, the Archbishop, on the one hand, observed that this manner of acting was less in conformity with the law, and on the other hand, that the Canons would no longer be able to visit the Sanctuary to foster the devotion to the Blessed Virgin, if they were subjected to such restrictions, brought the entire matter to the Sacred Congregation for the Arts. He earnestly requested: "I. That it would be pleased to declare whether the Canons of this Metropolitan Basilica receive their daily distributions whenever they go to the Sanctuary of the Blessed Virgin, whether to exercise their patronage there, or to perform sacred duties, or to direct and oversee the work of the building, or to collect the alms from the Chaplain; or to dedicate themselves to spiritual exercises. " "II. That, in the negative case, it would graciously grant the faculty that one person, appointed by the Chapter, who, with prior permission of the Ordinary, goes to the Sanctuary to direct or oversee some necessary work, may receive the choral distributions only on those days that are necessary

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for said work; and that, on the more solemn feasts of the month of September, two members of the Chapter may receive the distributions, provided that they are occupied in the service of the Blessed Virgin, or in some other work for the benefit of the Sanctuary." A synoptic discussion reveals that it is well known in law that Canons who are absent [are subject to certain conditions], which favor the Bishop's petition.

[*Latin ed. p. 77*]

Saint James of Cuba 77: For the benefit of the Church, those present in the choir are to be considered as such, and to receive whatever distributions are due, Chapter one. Concerning the custom of the clergy, not residing, in 6, which was confirmed by the Council of Trent. In Chapter 12, Session 21, concerning benefices, among these, first, are the canons, who, for the benefit of the choir, relinquish the administration of the affairs of the chapter, as Fagnanus states in Chapter 32, number 167: "It follows that a canon who is absent for the affairs of the chapter should be considered present." Therefore, in a case arising, the Sacred Congregation judged that the canon, while absent for the affairs of the chapter, should not be burdened, but rather, the chapter should be obligated to provide a substitute in the meantime, and to restore to the said canon the distributions and stipends for the time he was absent. This is in agreement with Bonae de Hor. can. disp. 2, question 3, point 3, number 15; and Antonellus, de "Iurib. Unie." book 2, part 7, chapter last, number 157. And the Sacred Congregation has also taught repeatedly, in Palermo in the year 1588, "It was judged that the orator should receive daily distributions for the affairs of the chapter"; and in Trani, Distribution 20, December 1862, in response to question 10: "Whether and how canons who are absent from the choir, and who are occupied with the administration of the chapter or the Bishop's table, may receive distributions, in such a case," it responded: "Regarding the canon who administers the affairs of the chapter, affirmatively, for the days and hours in which he is actually engaged in the administration; in other cases, negatively." Furthermore, since the canons of Saint James are delegated by the chapter to safeguard and exercise the rights of patronage, and appear to be absent for the affairs of the chapter, it must be concluded that they are in no way subject to penalties; and this all the more so, because they are assisted by an ancient and established custom. Although, regularly, the chapter does not have the power to grant, even for a short time, permission to be absent for a cause, unless the cause is expressly stated in the body of the law, as Garcias de Benefic. part 4, chapter 2, number 402 and following, and numbers 420 and 421 state, nevertheless, a custom should be tolerated, since it is very reasonable, to allow canons to receive distributions.

[*Latin ed. p. 78*]

78 Saint James of Cuba, occupied by order of the Chapter for the revision

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of accounts, and of the reasons for revenues and expenses of the chapter mass, or of the Church Fabric, as taught by Monet, *de distribut. part. 2 quaest. 11 n. 46*; Ventriglia, *adnot. 19 §. 3 n. 15*; Scarphantius, *ad Ceccop. part. 1 lib. 2 tit. 12 n. 15*. It is not fitting to discuss here the matter of Canons occupied for the benefit of the Sanctuary, and not of the Church, concerning whose distributions inquiry is made. For, although these Canons are consulted closely and immediately concerning the good and benefit of the Sanctuary, at least remotely and mediately, the benefit of the Chapter is also considered, whose greatest interest it is to have its rights safeguarded and observed, and to ensure that no damage whatsoever arises to it from the resources of the Sanctuary. Indeed, the patron, when the revenues of the patronized Church are lacking, is bound to bear its burdens and to restore it, and even to rebuild it from the foundations, if it should be necessary; Pitonius, *de Contr. Patron*, allegation 12 n. 4, 5, with others cited by him. Therefore, the benefit of the Sanctuary in the case of refunding to the benefit of the Cathedral Church of Saint James of Cuba, and of the same Chapter, must be concluded. Furthermore, if, not by right, at least by the grace of a Canon appointed by the Chapter, the faculty of making daily distributions is granted, this is only with the prior permission of the Ordinary. Indeed, the Sacred Congregation accustomed to grant such indulgences, subject to the disposition of the law in Chapter unique *de Cler. non resid.* in 6, and to the sanction of the Council of Trent, Session 24, chapter 12 *de Ee form.*, as is clear from Alben, September 16, 1826; Mazzarini, May 14, 1825; Segni, March 20, 1824: especially when it is established that it is for the cause of utility or necessity, which is left to the judgment of the Ordinary, as the Sacred Congregation has constantly taught, especially in Segovia, in the year 1539. Indeed, the Archbishop testifies to the evident utility, and even necessity, for the Church, saying: "It is very necessary that the Holy See favor the requests, and that the right of patronage be exercised in an orderly manner by the Chapter, so that abuses may be avoided, and that devotion to the Blessed Virgin Mary in the celebrated image, which was begun in the early 17th century, may increase."

[*Latin ed. p. 79*]

Saint James of Cuba, seventy-nine leagues distant, commonly known as Bahia de Nipe, is said to have appeared to the inhabitants of this island. These things, the Most Reverend Archbishop adds, could not have been accomplished unless the delegates appointed by the Chapter were considered, or were deemed, privileged to benefit from the daily distributions; for in the case where such appointments were declared as Chapter obligations, such a declaration would constitute a burden upon the Chapters, who would not only lose one-third of the fruits of their benefices, which portion is today destined for daily distributions, but would also lose the benefits of their own homes, which for the most part would cause the Chap-

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ters to consider this privilege as a burden too onerous, because they would not consider that they were receiving sufficient compensation in the alms of Masses or sermons which they would obtain there.

WHAT IS OBJECTED TO THE BISHOP'S PETITION. On the other hand, it is important to note that, although the daily distributions are due to the Canons who are absent for the benefit of the Church, yet, as the very Fagliano states in the cited chapter, "Concerning Prebends," number 160, "this conclusion must be understood, provided that the absence occurs for the specific benefit of the Church, of which the distributions are questioned. Otherwise, if the absence occurs for the benefit of another particular Church or of the Church universal," and the authors Ioannes Andreas in chapter 1 of *De Christo non residens*, Anarchus in *Poenitentialia*, book 6, title 4, number 4, and Scarfanti in *Ad Ceccop.*, volume 1, book 2, title 9, number 44, all agree. Therefore, when the Canons are absent precisely for the benefit of the Sanctuary, separate from the Cathedral, it seems just that they should be denied the receipt of the daily distributions. Furthermore, it should be known that Canons who are absent from the choir in order to be available to hear confessions or to preach for the benefit of the Church in which they hold their benefice, are, according to constant practice, deprived of the daily distributions by the Holy Council Congregation. Indeed, the Holy Council Congregation, on March 14, 1620, responded: "Canons, while the canonical hours are being recited, cannot absent themselves from the choir to hear confessions or to celebrate Masses for devotional purposes, and those who do so..."

[*Latin ed. p. 80*]

80 Of Saint James of Cuba, it is reported that he lost his daily allowance, and in Nerotinen, on June 22, 1624, concerning a doubtful matter: "Whether Canons, upon whom it is not incumbent to hear confessions as part of their canonical duty, if, for the purpose of hearing confessions, they are absent from the service of the choir, may receive their daily allowances." He decided that they should not receive them. In the same manner, he responded in Macerata on February 14, 1767, and in San Miniato concerning question 8 on February 8, 1817. Fagnanus testifies that the Holy Congregation responded in the same way concerning Canons who preach, stating in Chapter "Concerning Prebends," number 114: "If a Canon reads and preaches out of duty pertaining to his office, he is to be given the fruits, but not the daily allowances." This, indeed, should apply even more strongly in the case of Canons, because the Canons do not leave the choir for the benefit of the Cathedral Church to perform such duties, but rather for the benefit of a sanctuary located far outside the town. Furthermore, pilgrims, for the sake of devotion, do not receive their daily allowances, as is stated by the same Fagnanus in the aforementioned chapter, number 119: "If pilgrims are present, they are given the twentieth part [of the allowance], and they

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do not receive the daily allowances." It also seems necessary to mention that in the case of Canons receiving emoluments from such duties when they go to the sanctuary, the Holy Congregation, according to its constant practice, denies them their daily allowances if they are absent from the choir due to a duty from which they receive profit, as is evident from the Public Indulgences of May 6, 1820, §. It should also be noted that it has been decided in the most recent documents of Urbania and Saint Angel in Vado, on January 19, 1884 (1), that this should be stated more strongly, especially when the Archbishop states that the allowances are not meager, but quite substantial. Moreover, nothing should be brought forward to the contrary, considering the ancient custom. Although it is omitted that this was interrupted by the Constitutions issued by the Archbishop and Chapter in the year 1877.

(1) You have this question in Volume XVI, page 492.

[*Latin ed. p. 81*]

Saint James of Cuba has been granted 81 exemptions; moreover, it must be observed that this custom has absolutely no value, since it is entirely contrary to the law, originating from the decree of Trent (Trento) in Session 24, chapter 12, concerning Reform, and the invalidating decree appended to its confirmation, as decided by the Sacred Roman Rota in the case of Seraphino, number 1140, item 1. Therefore, this custom has been rejected as unreasonable and a corruption of the law by the Sacred Congregation of Councils in the decrees cited by Barbosa de Com, chapter 30, item 20, and chapter 21, item 63; Pigliateli, Consult. 114, item 9 and following; De Luca de Canonie, discourse 10, item 3, etc. However, it does not seem that a dispensation can be granted even at the petitioner's request. Indeed, when, on May 6, 1820, the Sacred Congregation was establishing a certain rule regarding exemptions from the choir, it responded that those who are occupied with hearing confessions or with sacred missions should only be dispensed in cases of true necessity. In the present case, there does not seem to be any necessity. For all the duties for which a Canon should be sent, the Chapter can provide substitutes; for example, it can appoint a chaplain for spiritual matters, as the Archbishop stated, due to the recent civil war, and another expert for the affairs of the Sanctuary and the annexed Hospital. Furthermore, if the matters that can be best handled by others do not require the personal assistance of the Canon, then absence from the choir is not excused, as stated by Passerin, ad Cap. unie. n. 110 de Cler. non resid. in 6, and by the Sacred Roman Rota in the case of Seraphin, number 1131, item 4, and confirmed by the Sacred Congregation of Rites in the recent Interamnens of June 2, 1883 (1). With these premises established, the following question must be considered: Can the Canons of Saint James of Cuba, by attending the Shrine of the Blessed Virgin Mary of Charity, legitimately receive daily distributions in that case?

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(1) Reported in Volume XVI, page 98. Acts, Volume XVII, session CXLV, 6.

[*Latin ed. p. 82*]

82. Of St. James of Cuba. And concerning the negative second question: Whether and in what manner indulgences should be granted for the prayers of the Archbishop in this case.

RESOLUTION. The Sacred Congregation of the Council, having considered the matter, on the 8th of March, 1884, decided to respond: To the first question, provision will be made in the second. To the second question, affirmatively in all respects for ten years.

FROM WHICH THE FOLLOWING IS DERIVED. To distribute daily, for those days which are necessary, to the canons attending the Sanctuary of the Blessed Virgin Mary, as often as it shall be judged and deemed by the Bishop, to whom the judgment is entrusted, to be for the necessity or benefit of the Church.

AMALFITAN PROPERTY. On the 5th of April, 1884, in the town of Pastena, near Amalfi, there exists a house which, from ancient times until the beginning of the present century, was a monastery of religious canons, and indeed a notable one, according to the Archbishop. For it is said that St. Francis of Assisi built this house and graced it with his presence, and in it, besides the chamber of this Saint, are also venerated the remains of Blessed Bonaventure of Potenza and the Venerable Dominic of Muro. Near the house, and formerly attached to it, stands the church of St. Anthony, from which these monks, also called Antonians, also took their name. During the time of Napoleon I, the religious were expelled, and they never returned. Subsequently, the church was separated from the house, provided with its own rector, and erected as a subsidiary of the parish of Pastena; the house, however, passed into the property of the parochial church, and more recently was given to a certain Anthony Barbaro for use as a resort.

SUMMARY OF THE FACTS.

[*Latin ed. p. 83*]

The property in Amalfitana, consisting of 85 annual allotments, is valued at 255.50. The individual, who must incur new expenses to adapt the old house for the present office, desires and earnestly implores the Holy Father to grant him the use of this house under an emphyteusis. When consulted about his opinion regarding this contract, the Ordinary expressed complete opposition, primarily alleging that scandal would arise from it among the people and that it would be detrimental to the Church. However, since these matters were not entirely clear, fearing that the Archbishop might be mistaken in this matter, he consulted a neighboring Ordinary, namely

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the one in Cava de' Tirreni, for his opinion. And this one expressed a completely opposite opinion; after considering the facts, he declared the contract to be beneficial and urged its prompt execution. The parish priest presented his full agreement for granting the emphyteusis. And the Syndic of the City, inclining towards the same view, stated that he could foresee no objection to the emphyteusis among the people, since they have never considered this house to be a monastery of Religious, who have been suppressed for a long time. A Synopsis of the Arguments. And first, it can be argued against the emphyteusis that it constitutes an alienation, as expressly stated in chapter Nulli, title 5, concerning ecclesiastical property: "The word 'alienation' includes a condition, a donation, a sale, a commutation, and an emphyteusis, which is a perpetual contract," indeed, even a temporary one, according to those Doctors who hold that the term 'alienation' is broadly understood in ecclesiastical matters, "and as it encompasses every act by which ownership, whether direct or useful, or usufruct, or a right, is transferred to another," as stated in the Glossary in chapter Nulli, cited above, in the word 'alienari.' Riffenstuel, book 3, title 13, number 3; Azor, part 2, book 9, chapter 1, question 2; Barbosa in Collect, ad Extrav. Ambitiosae, number 5, citing others. Therefore, since an emphyteusis resembles an alienation, WHAT ARGUMENTS ARE RAISED AGAINST THE EMPHYTEUSIS.

[*Latin ed. p. 84*]

84. The grant of an *Amalphitana* [a form of leasehold] cannot, indeed, be conceded without a canonical reason, as the Doctors of Canon Law, from *can. Sine exceptione 12, q. 2*, teach in concordant judgment, among whom is Reiffenstuel, *tit. XVIII, Hh. 3, no. 260* – there – «without a legitimate reason and the due legal formalities, ecclesiastical properties cannot be granted, either for a time or perpetually, anew in *emphyteusis*...» It is clear from *can. Apostolicos 13, caus. 12, q. 2; cap. Nulli cit.*, and from the decree *extrav. Ambitiosae*, that three just reasons for alienation are enumerated; namely, necessity, as is known from Clement I, *tit. De reo eccl. alien, etc.*, piety from *can. Aurum, c. 12, q. 2, in decreto*, and manifest utility from *cap. 8, § fin. eius tit. De reb. Eccl. alien, etc.* Indeed, the first two reasons do not require demonstration in this context; but even the third may be lacking. For if, in the institution of the *emphyteusis*, a small annual rent, or one in any way less than the actual price of the lease, is fixed, the Church would certainly suffer damage. Moreover, the *emphyteusis* may perhaps put the very direct dominion of the Church over the property in danger. For the civil Code, in force in these places, in article 1564, decrees that the *emphyteuta* may redeem the property, by means of a price. Nor can the danger of redemption be avoided by agreements: for the same Code, in article 1557, declares that any agreement of the parties, contrary to the article mentioned above, is entirely void; consequently, the

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preservation of the direct dominion is always entrusted to the judgment of the *emphyteuta*, and therefore the loss of the building by means of the *emphyteusis* may perhaps occur sooner or later. And although this cannot be done without a suitable payment, yet, since it is of the greatest importance for the Church to preserve real estate, care must be taken to avoid the danger of losing it. Furthermore, I will add that if the Orator requests an *emphyteusis* in order to obtain compensation for expenses incurred, either through the length of possession, or through a reduction in the annual pension, he obtains the same benefit as he would from a lease. For the same Code, in article 1571, speaks of a lease.

[*Latin ed. p. 85*]

The Amalfitan arrangement allows for a lease of 30 years, or for the entire duration of the lessee's life and two subsequent years, and would also provide the Church with greater security regarding its property; therefore, it appears preferable. Furthermore, the Archbishop testifies that the people have long expressed their desire for this house to be restored to the Religious, and indeed, the current rector of the Church has already consulted with the General Minister of the Religious Order in order to achieve this. Truly, the emphyteusis, by its very nature, would be an obstacle to this pious desire, and would prevent the attainment of this spiritual benefit for the Church. Finally, the Archbishop noted that the structure of this house has not been altered since its foundation, which indicates that it is a religious house; and no one fails to see that it is the Convent of St. Anthony, founded by St. Francis. Moreover, he continues, it would be shameful to entrust this house, which is worthy of veneration due to its sacred memories and its purpose of worshipping God, to profane hands and worldly clamor; and there is also the danger that it might be converted to dishonest and sordid uses.

WHAT FAVORS THE EMPHYTEUSIS. On the other hand, it has been observed that this house has served only as an inn, and that this has not caused scandal or prejudice to the piety of the faithful; it is not understood why the establishment of an emphyteusis would arise from this. Indeed, with regard to the external condition of the building, the emphyteusis adds nothing to the lease, and in this respect, it is entirely the same to lease the house as an inn or to grant it in emphyteusis. Furthermore, the Archbishop's judgment in this matter will be lessened if it is true, as the opposing party suggests, that he harbors some animosity towards the speaker. And although the Prelate denounces this malicious insinuation and rejects it with indignation, it is worth remembering that the Ordinary of Aversa and the parish priest of the area were in agreement in approving the emphyteusis; therefore, at least in this respect, the Archbishop's judgment is

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wounded. But, setting aside personal opinions, which are of little value,

[*Latin ed. p. 86*]

86. Concerning the property in the vicinity of Amalfi, and considering the matter intrinsically, it is pleasing to recall that this house was once a monastery; but at the beginning of this century, it passed into the endowment of the parish of Pastena, and is legitimately held by it today. The Holy See, as is known, has ratified certain usurpations carried out during the French Revolution, under certain conditions and to avoid greater evils. Therefore, given this situation, this house, now properly belonging to the parish, cannot, even if desired by the Archbishop, be so easily transferred to religious [orders]; for such a transfer would constitute an alienation, since the goods of one Church would be transferred to the benefit of another, which is generally prohibited by the title concerning ecclesiastical alienation, etc., and in any case, could not be carried out without a canonical reason and the proper legal formalities. Furthermore, once the legitimate possession of the parish over the house is established, it cannot be denied that a leasehold interest [emphyteusis] is permissible. Indeed, the person who has long leased the house, and who is now compelled to incur considerable expenses in the old building, justly and reasonably wishes to secure his rights through a long-term leasehold; and since this can be reasonably achieved through a leasehold, he therefore reasonably requests it. Therefore, justice itself favors this arrangement. No detriment, but rather a benefit, seems to be provided to the Church. Indeed, on the one hand, a leasehold could be established under certain conditions and for a limited time, and it is quite likely that such a leasehold would be readily accepted by the lessee, since, according to the testimony of the Ordinary of Cava de' Tirreni, he is so obedient to the laws of the Church that he would not refuse to include a clause allowing the house to be held at the discretion of the Church. Thus, with this type of agreement in place, the improvements that would be made by the lessee would, in the end, constitute a future benefit, and would eventually be transferred to the ownership of the Church. Furthermore, it is well known that a leasehold can be established when there is a benefit to be gained. This is demonstrated by the texts cited above, and by the writings of the Abbot in chapter 1, paragraph 29; Covarruvias, *Hh. 2 Variar*, resolution, chapter 17, number 5; and others, as omitted, Reifenstuel, I, chapter, number 261, argument, canon.

[*Latin ed. p. 87*]

AMALPHITANA 87, exception 52, causes 12, question 2; chapter 1, concerning ecclesiastical properties alien to the Church, in VI; Clement I, joined with extrajudicial matters. If anything can be seriously opposed to this, it is the existence of civil laws by which we are governed, by which Anthony Barbaro and his successors could claim ownership of buildings

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against the Church. But first, the presumption does not appear to be based on valid reasons, since Anthony Barbaro seems to have obeyed the laws of the Church sufficiently. Furthermore, it is worth considering whether Italy, which has preserved the immovable property of parishes, which has so far been saved from fiscal seizure, is daily threatened and in danger. Moreover, it seems more useful for a private individual to trust in his own conscience, who, under the title of emphyteusis, will probably have his property preserved for the Church, than to commit himself to the uncertain and perhaps unfavorable judgment of the government. With these considerations in mind, the following question was to be resolved: Whether and under what conditions a house should be granted in emphyteusis in this case.

RESOLUTION. The Sacred Office, after discussing the matter, on April 5, 1884, decided to respond: Affirmative, up to the third male generation only; with an increased fee for the lease, but no less than six hundred, and with the usual clauses, after a verbal agreement with the Most Holy.

FROM WHICH THESE CONCLUSIONS ARE DERIVED:

I. Emphyteusis over ecclesiastical property is permitted by canon law if there are causes present, which are necessity, piety, and utility.

II. In this case, the utility to the Church seems to be present, both by reason of the fee by which it was granted, and by reason of the emphyteuta, who, by obeying the laws of the Church, seems to trust better in his own conscience than in committing himself to the judgment of the government, which is entirely adverse to the Church (1).

(1) See Vol. I, page 251, appendix 8; Vol. I, page 87 and 52, 8.

[*Latin ed. p. 88*]

88. PAVIÆ. REGISTRY OF LEGAL PROCEEDINGS, May 10, 1884. SUMMARY OF THE CASE. The Bishop of Pavia stated that an ancient custom prevailed there, by which the sacrament of Baptism was administered only in the cathedral church, from Thursday until the octave of Easter. In order that this privilege of the cathedral might not appear merely superficial, it had been established that all those born at that time, or those offered to the Church for baptism, should always be brought to the cathedral, whatever the time at which they were baptized or brought, for the completion of the ceremonies. A question arose between the Chapter and the Parishes, as to whether those born before that time, who were nevertheless to be brought within that time, should also be brought to the cathedral, but who, for some reason, were not brought. The Chapter maintained that those born before the privileged time should also be brought to the cathedral, as well as those born after that time and offered for baptism. But the Parishes did not concede this, and maintained that only those born within the privileged time

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should be brought to the cathedral. SYNOPTIC DISCUSSION. DEFENSE OF THE CHAPTER. The Chapter, therefore, first of all recalled that this right originated from the most ancient discipline of the Church, formerly in force there, by which the sacrament of Baptism was administered in the single cathedral church. And although the aforementioned right of the cathedral had been greatly limited in recent centuries, it nevertheless extended, at this time, to all infants, who, being born on Thursday, were to be baptized at any time, or for whom the solemn ceremonies were to be completed in the same place. This was demonstrated by the decrees of the Bishops, published annually from the year 1628 to the year 1802, by which the Parishes were reminded.

[*Latin ed. p. 89*]

PAPIEN. 89: They were forbidden from daring to infringe, under any pretext, the rights of this Cathedral. Moreover, the Chapter observed that it was not explicitly stated in these decrees of the Prelate that infants born before the time of the privilege should be baptized in the Cathedral, even after Easter. For the Bishops, in their explicit prescriptions, only consulted the needs of the Chapter, for which recourse was made to them; but the Chapter never had to intervene regarding the violation of discipline in this matter, because perhaps it was never violated, due to the diligence of the parents in baptizing their children. Furthermore, since it is also prescribed by the law of the diocesan Synod of the year 1878 that the baptism of infants should not, under any pretext or circumstance, be postponed beyond the eighth day after birth, it necessarily follows that parents are obligated to bring infants, born at any time, to the Cathedral as soon as possible, so that the Chapter may confer baptism upon them. Indeed, it is entirely contrary to right reason to deprive parents of this right due to their fault; for no one should suffer a prejudice to their rights due to the culpable negligence of another. Therefore, the opinion of the Parish Priests, and considering the character of our times, it frequently happens that parents, out of concern for the eternal salvation of their children, postpone baptism until after Easter, so that they would not bring them to the Cathedral. However, any doubt regarding the extension of this law is completely dispelled by the warning added in the diocesan Calendar from the year 1818 until the present time, in these very words: "Let the Parish Priests of the city remember, and let them warn the faithful that, from the fifth day of the week until the day of the Lord in Albis, inclusive, baptisms should be conferred only in the Cathedral Basilica, according to the unforgettable custom and possession of the Chapter; and therefore, let all bring to the same Basilica the infants born from midnight preceding the aforementioned fifth day, until midnight of the aforementioned Sunday in Albis; or those already born and

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not yet solemnly baptized."

[*Latin ed. p. 90*]

90. PAPIEN. [concerning] those who are born either within the city or in the suburbs. And if any of them should have been baptized at home out of fear of death, or if it should happen that the Baptism is delayed beyond the Sunday in White garments, then those solemn ceremonies should be performed, as well as the Baptism itself, solely in the Cathedral. "By these words, it appears that all children born before the time of the privilege are to be baptized only in the Cathedral." The Chapter considered it most important that this disposition be observed. Indeed, since the Bishop has permitted this every year, and the Parishes have obeyed him, they have clearly demonstrated that nothing other than what was established there some centuries ago has been decreed. However, even with the addition of this provision in the Calendar, the right of the Chapter has been somewhat extended; nevertheless, at this time, it appears that, according to a reasonable and legitimate custom, it should remain in full force. For the custom by which the right of the Cathedral is extended seems to be very reasonable, since it is in accordance with the practice of the ancient Church, and has been legitimately prescribed for seventy years, and has received explicit consent from the Ordinary, and therefore, deservedly, the Chapter has maintained it; it is quite wrong for the Parishes to oppose it. To this is added the Diocesan Synod of the year 1878, in which this most ancient custom is confirmed. Therefore, it seems that both the Bishop and the Clergy admitted to the Synod have understood this privilege in accordance with the opinion given by the Chapter. DkH ′ xsio PARISHES. However, the Prefect Mutti, who defends the rights of other Parishes, has shown that those born before the time of the privilege, and who are presented for Baptism, and for the sake of the ceremonies, belong to the Parishes. He demonstrated this first of all by the authority of the Cardinal Bishop Rossi, who, governing the diocese in the 14th century, said: "This privilege of the Chapter is derived from ancient custom, and at the same time, he established this: 'See to it that all children are baptized in the entire city of Pavia, from Holy Thursday up to and including the Sunday in White garments, in the Cathedral Church.'"

[*Latin ed. p. 91*]

PAPIEN. 91. [The matter was] equally demonstrated by numerous edicts of the Bishops, in which, the privilege of the Chapter being brought to mind, its extent is most clearly defined. For in these eloquent words, it is stated that the custom of this kind, and the possession of the privilege, are to be maintained by the favor of the Chapter; and the parish priests are strictly ordered not to administer the sacrament of baptism in their churches during the entire time. Therefore, says the Prefect, the power to baptize was taken away from the parish priests only during the time of the

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privilege. But since it was thought that infants born during the time of the privilege would be baptized in the parish church after its expiration, the parents, in order not to be forced to bring them to the Cathedral, postponed the administration of baptism. Wherefore, the Bishop of Pertusa, in order to eliminate this abuse and to preserve the right of the Chapter, intact and secure, expressly forbade it in his customary edict, promulgated in the year 1740. Regarding infants born during the time of the privilege and baptized at home out of fear of death, he ordered that the sacred ceremonies be completed in the Cathedral; but regarding others, he said: "We do not permit, in order to evade the right of the Cathedral, that infants be kept at home beyond that time; nor will it be permissible for the parish priests, after the octave of Easter, to baptize those born within the aforementioned time." This disposition, confirmed by other Bishops, the Prefect maintained to persist in its full force. Nothing was added to this disposition later in the calendar; on the contrary, he affirmed that it validated their rights. For in that disposition, the privileged time is established from Thursday of the Lord's Supper until Sunday in Albis, inclusive, and even those already born and not yet solemnly baptized are included; and finally, it is added: "If any of these have been baptized at home out of fear of death, or if their baptism should be postponed beyond Sunday in Albis, then the solemn ceremonies, as well as the baptism itself, shall be celebrated only in the Cathedral." The words "if any of these" must be understood to refer to those born during the privileged time, or those for whom baptism was offered during that time, even if they were born before. These infants...

[*Latin ed. p. 92*]

92. PAPIEN. The manner in which baptisms ought to be administered in the Cathedral [church] is a matter of debate. Therefore, whether one considers the Bishop's edicts, or the decree promulgated in the calendar, the Chapter insists that its privilege, according to the meaning mentioned above, should be understood. However, even granting this, if one examines the decrees in the calendar, any ambiguity disappears: for there is no document that clearly shows that the Bishops intended to extend the Chapter's privilege by that decree in the calendar. Therefore, the Prelate rightly observed that, although the prescription in the calendar may seem to favor the Canons, this prescription, being ambiguous, is not ancient. He also adds that the same custom prevails in Patavii, but that it is not permissible to baptize any child of other parishes after Sunday in Albis [the octave of Easter] in the Chapter, as the Vicar General testifies. It is also incorrect for the Chapter to claim that it has acquired a right by custom, at least from the beginning of this century. For, since the erection of baptismal fonts in Papiae during the 11th century and subsequent centuries, the parish priests have been the ministers of baptism according to the common law of the ordinary. On the contrary, a custom of this kind, unless it is supported by a

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privilege of the Supreme Pontiff, or at least by an unforgettable prescription, seems to be inadmissible, because it is harmful to the common good, both because it is easier for the parish priests to determine who has been born of lawful marriages, and to record them as such in the parish registers; and also because they are better able to exercise vigilance to prevent parents from delaying in bringing the child to the Church. However, he absolutely denied that the aforementioned custom had existed, when he mentions that some children, born before the time of the privilege, were baptized by their own parish priest. Indeed, omitting other examples, in the year 1876, at the order of the Episcopal Curia, a certain Francis, born there in the year 1846, was baptized again, under the condition, because of a doubt about the validity of the first baptism. Therefore, in the administration of the sacraments, the favor of persons is of the least importance; rather, the salvation of souls is the primary concern.

[*Latin ed. p. 93*]

PAPIEN. 93. It is necessary to consider that, when the right of the Chapter is asserted and opposed to this, and it is not clearly demonstrated, the opinion of the parish priests seems to be to be accepted. With these and other considerations in mind, the purpose was to resolve the doubt concerning whether the Chapter of the Cathedral or the parish priest has the right to administer the sacrament of baptism after the Sunday of white garments, or to perform solemn ceremonies for infants born before the fifth day of the week in the Feast of the Lord's Supper.

RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter, on May 10, 1884, decided to respond: Affirmative, in favor of the parish priests.

FROM WHICH WE GATHER:

I. That the ordinary ministers of baptism are the parish priests, both by common law and for the common good of the Catholic society; indeed, so that the names of the newly born may be recorded in the parish registers, and it may be more easily known who they were born to from just marriages.

II. That any contrary custom ought to be based on a special apostolic indult, or that it has been established from time immemorial, so that the prescription may be valid, and be considered as a new law, derogating from the old.

III. That in the matter of the rights of the parish priests, there has been a certain right; but that a contrary custom to such a right has not been based on an immemorial prescription.

FROM: DECREE OF THE HOLY CONGREGATION OF THE SPANISH CHURCHES, OR COMPOSTELLANAE, by which the judgment of the

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Archbishop concerning the identity of the bodies of St. James the Greater Apostle and his disciples, Ananias and Theodorus, is confirmed. This most celebrated sanctuary, among those throughout the world which are most venerated and frequented by the faithful with great devotion and pilgrimages, is for the purpose of fulfilling vows, and...

[*Latin ed. p. 94*]

94. According to the constitutions of the Congregation of Sacred Rites, the most noble Shrine of Saint James the Greater Apostle in the city of Compostela in Spain is held in the highest honor. This is where his most sacred remains were brought from Jerusalem after he was struck down by the sword at the command of Herod. This shrine, for countless centuries, has been illuminated by countless miracles and preserved unharmed, both during the time of the Arab occupation and during other calamities to which Spain has been subjected; it has always been a principal bulwark of this nation. For this reason, this most precious treasure was guarded with the utmost care. However, in the course of the sixteenth century, due to the incursion of the English, who, having sworn a Catholic faith, were traversing the Spanish regions, and who were especially eager to seize and scatter the relics, and after the old guard of the Archbishop was removed, it was hidden in a more secret place, so that in subsequent centuries it was completely unknown to the faithful. Nevertheless, from history, it was certainly known that the sacred relics had never been removed from the main chapel of the Basilica of Compostela, and, through constant and unwavering tradition up to our time, it was believed that they were still kept in the apse of that chapel. When the present Archbishop of Compostela, the Most Eminent and Reverend Lord Cardinal Michael Paya y Ilico, some years ago, had devoted himself with great effort to the restoration of this Basilica, he conceived a pious plan in his mind, namely, to rediscover the place where the remains of Saint James the Apostle, and of his disciples Athanasius and Theodorus, were kept. To achieve this, he selected the most skilled and experienced men, constituted in ecclesiastical dignity, and had them thoroughly investigate the area beneath and around the main altar. However, the work did not proceed favorably. Finally, in the center of the apse of the chapel, behind the main altar, a chest made of stone and wood was discovered in the floor, containing the bones belonging to three skeletons of the male sex. Upon this, the Most Eminent and Reverend Cardinal Archbishop, after obtaining the opinions of distinguished experts, initiated a formal investigation; and it was inquired whether the bones found corresponded to the remains of Saint James the Greater Apostle and his disciples Athanasius and Theodorus. And after considering all that was to be considered, he pronounced his affirmative judgment. Then, the proceedings and his judgment were sent to Rome, so that they might be submitted to the supreme judgment of the Supreme Pontiff, and so that his judgment

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might be confirmed by Apostolic authority. Our Most Holy Father Leo XIII, considering this matter of such gravity, referred it to the Congregation of Sacred Rites for deliberation. With this in mind, on May 20th of this year, a response was given from the Vatican: "Delay, and consider; and let the matter be examined more closely," and the intention was to clarify some difficulties of greater importance. To facilitate this, our Most Holy Father sent to Compostela, the Reverend Father Master Augustine Caprara, Promoter of the Holy Faith, so that he might examine, inquire, and report on the matter.

[*Latin ed. p. 95*]

To the Congregation of Rites, having returned on the 95th day, I have diligently fulfilled my duty with the most accurate report. Therefore, again, the same assembled Assemblies, at the Vatican, on the 19th of July of the present year, 1884, concerning the following question: "Whether the judgment rendered by the Most Eminent and Reverend Archbishop of Compostela regarding the identity of the relics, which were found in the center of the apse of the main chapel of the same Basilica, and which are attributed to the Holy Apostle James the Greater, and his disciples Athanasius and Theodorus, should be confirmed in this case, and to what effect?" Then, the Most Eminent and Reverend Fathers Cardinals, and the official prelates, after mature discussion and deliberation, responded: "Affirmatively, that the judgment should be confirmed." And, having made a faithful report on these matters, I, the undersigned Cardinal, the Most Holy Lord Our Pope, ratified the judgment of the Sacred Congregation, and confirmed it with His Apostolic Authority. He also ordered that Apostolic Letters be issued under seal regarding this decree. On the 26th of July, in the year 1884, on the Feast of Saint James the Greater, Apostle.

D. CARD. BARTOLINIUS, Prefect of the Sacred Congregation of Rites.

(Seal)

LAURENTIUS SALVATI, Secretary of the Sacred Congregation of Rites.

CONCERNING doubts regarding the recitation of prayers after Masses celebrated without singing.

The following question was posed to the Sacred Congregation of Rites:

I. Whether the prayers after the end of each Mass, celebrated without singing, which have recently been prescribed by the Most Holy Pope Leo XIII throughout the Church, should be recited by the priest alternately with the people;

And II. Whether the prayer "Deus, refugium," with its verses, should be recited by the priest himself in this case, as is the custom with the "Ave Maria" and the "Salve Regina," with the people kneeling?

The same Sacred Congregation, in response to the report of the undersigned Secretary, responded to both questions: "Affirmatively." And so it

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responded and wrote on the 20th of August, 1884.

For the Most Eminent and Reverend Lord Cardinal, D. Bartolini, Prefect of the Sacred Congregation of Rites.

CARD. SERAFINI

LAURENTIUS SALVATI, Secretary of the Sacred Congregation of Rites.

[*Latin ed. p. 96*]

96. DECREE OF FLORENCE concerning the Canonization of the Seven Blesseds Founders of the Order of the Servants of the Blessed Virgin Mary. From newly presented documents by the Reverend Father, Brother Andrea Corrado, Secretary of the entire Order of the Servants of the Blessed Virgin Mary, and General Postulator for the Causes of the Servants of God of the same Order, the Most Holy Lord Pope Leo XIII, through a Decree of the Sacred Congregation of Rites, dated January 16th of the past year, deigned benignly to grant that, notwithstanding the Decree of His Holiness Pope Benedict XIV of August 8th, 1744, and also the response given by the Particular Congregation of Sacred Rites on December 14th of the year 1878, the following question, which had also been debated in the ordinary meetings of the same Congregation, might again be proposed and discussed in the same Sacred Congregation: "Can miracles, wrought by God in response to the collective invocation of the Seven Blesseds Founders of the Order of the Servants of the Blessed Virgin Mary, contribute to the effect of their solemn canonization in the case under consideration?" This question, as the Eminent and Reverend Lord Cardinal Lucido Maria Parocchi, promoter of this Cause, presented it in the ordinary meetings of the Sacred Rites held at the Vatican, the Eminent and Reverend Fathers entrusted with the care of the Sacred Rites, after mature examination of the matter, and after hearing the Reverend Father, Doctor Augustine Caprara, promoter of the Holy Faith, both orally and in writing, decided as follows: "It is to be considered that, given the newly presented information in the Cause of Canonization of the Seven Blesseds Founders of the Order of the Servants of the Blessed Virgin Mary, notwithstanding the Decree of His Holiness Pope Benedict XIV of August 8th, 1744, and the response of the Particular Congregation of Sacred Rites of December 14th, 1878, it is permissible to proceed to the discussion of six miracles, and the approval of at least four, which have been wrought by God in response to their collective invocation, according to the prescription of the same Supreme Pontiff in his general Decree of April 22nd, 1741, for Causes of the Blesseds through the way of venerable cult." June 26th, 1884. On that very day, a report of these matters was faithfully presented to the Most Holy Lord Pope Leo XIII by the undersigned Secretary. His Holiness approved and confirmed the aforementioned Decree of the Sacred Congregation.

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D. CARD. BARTOLINIUS, PREFECT

[Signature]

LAURENTIUS SALVATI, SECRETARY OF THE SACRED CONGREGATION OF RITES.

[*Latin ed. p. 97*]

97 Letters from His Holiness, Pope Leo XIII, to the Archbishop of Fiorentino; in which the opinions of two books are again condemned, which are entitled: "La nuova Italia" - "Il Vaticano regio." When, at the end of the past year, we spoke with our Venerable Brothers, the Cardinals of the Holy Roman Church, in the buildings of the Vatican, as we deplored many things that greatly troubled our mind, we specifically inquired whether men, forgetting their duty, had abandoned the piety owed to the Church, and whether they did not hesitate to inflict unjust wounds upon the sorrows of the most beloved parent, whom they ought to console. — Many and grave sins of this kind are committed in two books, with an argument not very dissimilar, with equal audacity, which are known to you, Venerable Brother, and are entitled "La nuova Italia" - "Il Vaticano regio." For in them there is abundant room for false and pernicious opinions: the authority of the Church is not spared; the sacred rights of this Apostolic See are openly attacked. The author of these writings, departing from his former way of life, has been seduced by the flatteries of men, not of the righteous; and with his talent and skill in writing, he perhaps serves more than he realizes, the cause of those who, while boasting of progress towards improvement, strive to accomplish their plans with reasons that often disregard religion and justice, and they do this especially in order to destroy the freedom of the Church, along with Christian discipline. Furthermore, he dares to arrogate to himself the right to inquire into those matters which are carried out by the legitimate authorities of the Church, and to subject them to his own judgment: and without any true modesty, he sows dangerous seeds in the minds of those who read, concerning the order by which the entire Christian cause is governed. He truly demonstrates, in his writings, the very war that is being waged against Catholic institutions at this time, rather than condemning it: and he audaciously contends that the cause of the labors, by which the Roman Pontiff and the clergy are unjustly afflicted, does not lie with those who inflict them, but with those who have perished. Such opinions, as they have been consigned in writing, were necessarily a cause of offense, and would bring about the danger of error, especially in this

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time of eagerness for new opinions.

[*Latin ed. p. 98*]

For many years, the religious orders have been praised, not only for their piety, but also for the merit of their writings. Therefore, although the work from the "Region of the Vatican," which was written by a certain author and which many of the Italian clergy had vehemently criticized and rejected, we nevertheless considered it necessary to seek the judgment of the most distinguished men on this matter, also in order to satisfy the objections that were being brought to our attention. Therefore, we instructed our Supreme Council of the Sacred Inquisition to carefully examine both writings and to determine what should be done. The Council, after holding several meetings and applying diligent judgment, condemned both works; one by decree issued on June 15, 1881, and the other on April 30 of the same year. These decrees were then promulgated by our Council, through the office responsible for noting harmful books, with our authority. Furthermore, appropriate exhortations and other acts of charity were made in an effort to persuade the author to change his mind and to condemn what he had written, and to submit his judgment to the legitimate authority of the Church. He did indeed do this, when the decree of 1881 was announced, by publishing a declaration in which he approved of his work, which was attached to the decree itself. However, what all good men lament, is that the man, tenacious of his own opinions, published another work from the "Region of the Vatican," which was tainted with the same errors that he had previously rejected, and he spoke of the aforementioned declaration in such a way as to deprive it of all force and validity through a perverse and distorted interpretation. At this time, as the Supreme Council of the Inquisition was about to pronounce its judgment on this second work, the author was warned to remember his duty and to make amends for the offense he had caused by submitting himself. However, it was necessary to use more severe warnings and commands, according to the discipline of the Church, to persuade the hesitant and evasive man. When these proved ineffective, it was deemed necessary to issue a decree by which he was subjected to the canonical penalty of suspension, unless he complied within a specified time. However, he refused to comply; indeed, he became more stubborn in his opinion and more audacious, and he published the work and sent it to the Sacred Inquisition Tribunal, in which his contumacious spirit was combined with the former insolence of his opinions. He entitled it "The Scandal of the Vatican Region, guided by Providence, good for something," and he added an appendix filled with bitter and insulting remarks about everything that had been done by the Sacred Inquisition Council in this matter. And this last work, after being properly examined by the same Council, was condemned by a unanimous vote on June 1 of the following

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month.

[*Latin ed. p. 99*]

LETTERS 99 to Julius; which our Council likewise took care to publish, having been commanded and approved by Us. Considering all these things, Venerable Brother, and recognizing what is in Our mind, We feel a profound sorrow because of such human obstinacy; and We are also grieved by the wickedness of the example, which it is necessary to consider harmful, especially to the young. We have readily undertaken and will continue to undertake acts of leniency and indulgence; nevertheless, it is Our duty to defend the authority of the sacred Councils, whose works We employ in the most important affairs of the Church, and to defend their dignity against false statements and injuries. Therefore, since We have used you, Venerable Brother, as a witness and interpreter in all that We have undertaken thus far for this cause, in order to restore the man to health and duty, We have decided to give you these letters, as a testament to Our continued charity. Furthermore, these letters serve to make known Our opinion regarding the aforementioned writings: namely, We reject and condemn all opinions that are erroneous and contrary to the truth, as well as all those things contained therein that are contrary to the Apostolic See and Our Predecessors. At the same time, We declare that all those things which have been judged, decreed, and enacted by the same sacred Councils, with regard to the writings in question, and with regard to various observations, punishment, and suspension imposed upon the author, having been approved and confirmed by Us, are therefore judged, decreed, and enacted by Our authority; and to the extent necessary, We reaffirm all of these things anew. For Our charity's sake, since We earnestly desire that he may correct what he has rashly done through repentance, We will continue to supplicate God that He may illuminate the man's mind with His light and assist his will with His virtue. You, Venerable Brother, continue to devote your efforts and study to this matter: for We do not doubt that, with God's help, he will recover his senses and bring solace to Our grief. In the meantime, Venerable Brother, and to your entire clergy and people, We impart Our apostolic blessing, a testament to Our benevolence, in the Lord.

Given at Rome, near St. Peter, on the 28th day of August, in the year 1884, in the seventh year of Our Pontificate.

Leo XIII, Pope.

[*Latin ed. p. 100*]

100 FROM THE HOLY CONGREGATION OF THE COUNCIL OF PANORMITA, REGARDING PAROCHIAL RIGHTS, dated April 5, 1884. SUMMARY OF THE CASE. In the waning years of the sixteenth century, there existed only one parish in the town of Caccabi, within the diocese

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of Panormita, established in the church of Saint George. However, when the Archbishop Manilio, while visiting the sacred diocese, observed the increased number of the faithful, and that it was not sufficient to provide them with proper spiritual assistance, in the year 1584, he issued a decree, exercising the authority granted to him by the Council of Trent, by which he erected another parish in the church of the Blessed Virgin Mary, greeted by the Angel. Nevertheless, he provided that the due honor and prerogatives, and the primacy, should be preserved to the aforementioned parish church of the Annunciation, as the mother church of Saint George. Indeed, he united, incorporated, and annexed the new parish to the church of Saint George. However, he desired that the said new parish should be distinct from the parishioners of the mother parish church in the administration of the sacraments and other offices. Furthermore, having defined the part of the town to be subject to the new parish, he decreed that it should be governed by two priests, who should properly perform the duties of administering the sacraments, visiting the sick, assisting the people with their exhortations, burying the dead, and other matters necessary for the care of souls, as is customary; and that these priests should be chosen and approved by the Most Reverend Archbishop and his successors in office, after a prior and rigorous examination. He also provided for the support of the two priests of the new parish. Shortly after the erection of this parish, disagreements and controversies arose concerning the exercise of parochial rights between the priests in charge of the new parish and the Archpriest and clergy of the mother church. On several occasions, both parties appealed the Archbishop's decision to the tribunal of the Royal Monarchy, and each presented arguments, sometimes in favor and sometimes against. However, when such contentions also...

[*Latin ed. p. 101*]

In PANORMITANA, these matters have been repeatedly raised. In February of the year 1882, the priests of the parish of the Most Holy Annunciation complained to the Archbishop about the violation of their rights by the clergy of the mother church. Upon receiving this petition, and desiring to put an end to the controversy, which had been causing great scandal among the faithful for so long, the Archbishop ordered that both parties present documents to his tribunal to defend their rights; and after deliberation, on July 17, 1882, the following judgment was rendered in favor of the parish of the Most Holy Annunciation: namely, that this parish is declared free and independent from the mother parish, although both are subject to the same pastor, with the honors and primacy of the mother church being preserved. It is granted to the clergy of the Most Holy Annunciation, accompanied by the pastor, or by sacramental chaplains, to carry the bodies of the deceased within their district, with a cross held aloft, from the deceased's home to the cemetery, freely passing through

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the territory of the other parish. If the clergy of the collegiate church participate in the funeral rites for the deceased of the parish of the Most Holy Annunciation, the pastor, or the senior chaplain of the collegiate church, shall wear the stole, blessing the bodies, and proceed together with the clergy of the parish under the cross of the collegiate church, before the chapter. The parishioners of the Most Holy Annunciation are ordered to have their children baptized in their own church, and not in the mother church, without the consent of the pastor. It is declared that the chapter of the collegiate church does not have the exclusive right to perform the sacred functions in the churches of the district of the Most Holy Annunciation; but that the clergy of that district are permitted, with the knowledge of the pastor, to sing Mass and perform other functions in the churches of their own district. It is also declared that the parish of the Most Holy Annunciation has the right to keep the parish books in its own archive, and to obtain copies from them, as requested; these copies must be signed by the pastor or by the chaplains, and not by the chapter. However, the party that lost the case was condemned to pay the costs of the judgment. Certain canons, as representatives of the collegiate church, and sacramental chaplains, on August 4, 1882, appealed to the Sacred Congregation, arguing that the judgment was unjust in several respects.

[*Latin ed. p. 102*]

102 In PANORMITANA, the Archpriest, for the purpose of information and deliberation, having received the acts of the judicial sentence, reported that three centuries had elapsed since the erection of the aforementioned parish, and that these had been three centuries of contention and litigation. Indeed, scarcely two years had passed when the Archpriest immediately attempted to claim the election of the chaplains of the new parish for himself, contrary to the decree of its foundation, asserting that they should be chosen and approved by the Archbishop. However, the Archpriest's claim, presented in the initial stage of the trial, was rejected by the Tribunal of the Royal Monarchy, without consultation with the Archpriest, and was found to be valid. From this arose the litigations, disputes, and pretensions on the part of the chapter against the clergy of the Most Holy Annunciation; and the Bishop deemed it necessary to put an end to these by confirming the rights of the parish of the Most Holy Annunciation, distinct from the mother church, and by preserving the honors, privileges, and prerogatives which belong to the mother church.

A Synopsis of the Dispute: CONCERNING THE RIGHTS OF THE COLLEGE. Those who defended the rights of the Collegiate Church of St. George were shown to be in error, the judgment of the Court of Nullity being clearly demonstrated due to defects in the form prescribed by law. For it was maintained that the citation had not been properly carried out, whereby those summoned should have clearly been informed of

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the entire state of the controversy, whereas they, having received only a general notification from the vicarious, learned that the chaplains of the Most Holy Annunciation had petitioned for redress for the violation of their rights, so that the controversy might be brought before the archiepiscopal court, but they were never able to ascertain the specific details of the accusations, even though they presented themselves on several occasions. Furthermore, the canonical economist, and the four administrators entrusted with the administration of the collegiate church, were not cited at all, whereas, according to the statutes of the mother church, they are obligated to defend the rights. The orator also pointed out another defect in the judgment, namely that the opposing party lacked the legitimate standing to be heard in court, since they should be considered as chaplains delegated by the Archpriest and removable at his will, as was defined by Cardinal Gravina in the judgment. Then, the patron, unable to influence the judgment,

[*Latin ed. p. 103*]

PANORMITANA 103, he endeavored first to demonstrate that the Parish of the Most Holy Annunciation was a filial church, subject to the mother church; secondly, that the grievances presented by the chaplains were entirely to be rejected. Therefore, addressing the first point, he recalled the decree of Archbishop Marullo, by which, besides the honor of being a mother church, certain rights were reserved to the Church of St. George. Thus, the "new" parish was united to the mother church in such a way that both were to be considered as one and the same parish. Therefore, a principal union, which is absolutely incompatible with incorporation, is to be excluded, and as Ferraris states in *Bibliotheca Canonica*, under the word "Unio" §. 5: "When neither church is subject to the other, nor do they coalesce into one body, but both churches are united in such a way that each retains its own title and degree of honor, and is governed only by one and the same rector; thus, two benefices remain entirely distinct, for example, two different bishoprics, although there is only one and the same bishop." Therefore, the incorporation of one parish with another can only signify a subordinate union, for which, according to the same Ferraris, cited *loc. cit.* n. 4, "two churches are united in such a way that they do not coalesce into one body, but one is superior, and the other inferior, and accessory to the superior, or principal one, and this is often done for the increase of the endowment of the other benefice which does not have sufficient revenues for proper and suitable support. Therefore, such a union is called accessory or subordinate." Therefore, a true dismemberment cannot be admitted from the incorporation of the new parish with the old one. Therefore, since the words of the decree cited so clearly demonstrate that the new parish remained united to the mother church, the erroneous opinion that, at the time of its foundation, there was no indication of a union and

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annexation, is entirely refuted. Furthermore, there is another argument to show that the new parish is not other than filial and an assistant to the mother church. For if, by a true dismemberment, two independent parishes had been established, the archpriest would have lost a part of his benefice, which would have been used to form the new parish.

[*Latin ed. p. 104*]

104. In Panormitana, he drank. Such a matter ought to have been presented either to another Parish Priest, or to the Archpriest himself. It was also necessary to determine whether these two distinct benefices should be assigned to different titulars, or whether both should be assigned to the Archpriest for the time being. However, not a single word concerning this matter is found in the founding decree. Therefore, if the Archpriest has always held both Parishes, it is because the administration of both Parishes has been perpetually considered as a single and the same benefice, due to the aforementioned subjective union and incorporation. Concerning this, Berardi, *Ius Eccles. De benef.*, Dissertation 3, chapter 3, volume 1, page 271, after listing various types of unions, continues as follows: "For, in the first place, a division can be made in such a way that one of the divided Churches is dependent on the other, from which it is separated. A second division can be made in such a way that the divided Church is dependent on the other from which it is separated. The effect of this division is that the divided Church can enjoy the privileges of the principal Church, while still being considered as a part of the matrix Church." Furthermore, regarding the new Parish, Archbishop Manilio, remaining silent, only wanted two priests to be present for the continuous service of both the Church and the benefit of the parishioners. Consequently, they were to be considered as coadjutor chaplains of the Archpriest, who, by virtue of the aforementioned subjective union, had become the rector of the new Parish, or rather, had never ceased to be so. Moreover, due to the diverse opinions of the Archpriests, chaplains were constantly chosen who were only delegates of them, and always subject to their will, as is clearly demonstrated by the authority of the Cardinal Archbishop Gravina. Therefore, it is abundantly clear, from the three-hundred-year-old custom, and from the continuous choices made by the Archpriests, that the Parish of the Annunciation is subject to and an auxiliary of the matrix Parish. Nor does the pre-defined boundary help, for this only...

[*Latin ed. p. 105*]

In PANORMITANA, it is indicated within which limits and among which faithful the Chaplains of the Church of the Most Holy Annunciation must render their service to the Archpriest in the administration of the sacraments and the exercise of sacred functions. Therefore, the distinction of boundaries is excellently reconciled with the incorporation of parishes.

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This interpretation must be maintained; for if the Archbishop had intended something different, he would have openly declared that the new parish was entirely distinct from the mother church; but on the contrary, he wished only that it be distinct from the parishioners of the mother parish. Since he intended to provide for the spiritual good of the faithful, who, due to excessive distance and the roughness of the roads, could only reach the mother church with great difficulty, he established a filial and auxiliary parish, and prudently prescribed that the Chaplains of the new parish should exclusively assist the Archpriest in caring for the parishioners residing within the defined limits. In no way do the new parishes demonstrate independence, possessing a baptismal font and all other things with which they were equipped, like other parishes. For these qualities in no way exclude the quality of an auxiliary church, since it is absolutely necessary that the faithful not have to travel to the mother church with great difficulty, as the founder expressly desired. It is also wrongly argued that the independence of the new parish is proven by the fact that the Archbishop Manilio was involved in its erection as a delegate of the Apostolic See, and by the authority granted to him by the Council of Trent, Session 21, chapter 4, and Session 24, chapter 13, concerning reforms. For, whenever the number of souls has increased, or the difficulty of access to the parish exists, Bishops are in no way obligated to immediately divide the parish and erect another equally principal and independent one, but they enjoy freedom to act in another way, which, according to local circumstances, they deem most beneficial for the good of souls. This is most often done by erecting a church located in a more convenient place as a filial church, and by appointing there parish priests as assistants, as many as are sufficient to perform the parochial duties. Whenever...

[*Latin ed. p. 106*]

106 In PANORMITANA, however, the Bishop, in order to better serve the needs of the people in spiritual matters, cannot resort to dismemberment and the erection of a new parish; thus, among others, Ferraris, *Bibliotheca Canonica*, Verb. *Dismembratio*, no. 15; Barbosa, *Collectio Tridentiniana*, Session 21, chapter 4; Fagnan, chapter 3, *De Ecclesia Aedificanda*, no. 18; Monacelli, *Formularium Ecclesiae*, Volume 1, Title 2, Form no. 3, no. 4; Lotter, *De Re Beneficiaria*, Book 1, Question 18, no. 41; and Cardinal De Luca, *De Parrochis*, Discourse 34, and *Sacra Congregatio Tridentina*, Disputation 16, no. 3. Van Espen, *Jus Canonicum*, Part 2, Title 16, Chapter 2, no. 33; also, the Rota's audience, especially in Aesina, Parish, June 18, 1751, no. 5 and following, and in the confirmation of April 28, 1752, no. 4, before Elephantutio. Therefore, when it can be most effectively served in spiritual matters by establishing a filial and dependent parish, it is easily demonstrated that the Archbishop did not intend to act contrary to the

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mind of the Council of Trent, the opinions of the Doctors, and the practice of the Sacred Congregation, by erecting a new parish in this way. Nor can it be maintained that a more useful provision for the care of souls is seen in erecting a new parish as equally principal and independent, rather than merely as an auxiliary. For greater utility would be understood if a proper and specific pastor were appointed to the new parish; but it cannot be conceived that, as in this case, it would be governed by the same pastor of the mother church through his coadjutors. Indeed, it should be noted that only two parishes, distinct and independent from each other, are governed by the same pastor, when previously each had its own particular rector, and afterwards their union held an equally principal place, because the revenues for the support of both pastors had failed. But it has hitherto been unheard of for a parish to have been dismembered in order to establish another, equally principal and independent, which, nevertheless, by the law of its foundation, must perpetually remain under the same pastor. The observance following the act of foundation is clearly consonant, as can be seen in the acts of the sacred visitation from the year 1629; and as has been declared by the sentences of the royal tribunal.

[*Latin ed. p. 107*]

PALERMO 107. According to the second point of his argument, the Advocate sought to demonstrate that each of the grievances presented by the Chaplains should be rejected. Indeed, if the principles of Canon Law, which are invoked to justify the admission of the Chaplains' grievances, were to be applied equally to parishes, both principal and independent, which have their own pastor, they would be entirely inapplicable in the case of the parish of the Most Holy Annunciation, which, as stated, is a filial church and incorporated into the mother church, so that a single pastoral office is perpetually assigned to a single pastor. Therefore, since the judgment of the Tribunal, accepting the grievances of the Chaplains, is based entirely on a false premise, it deserves no consideration. The Advocate mentioned something about each of the grievances, in order to show that each should be rejected. Furthermore, the decrees of the Sacred Congregation cited in opposition, by which a public cemetery located outside the walls is placed under the jurisdiction of all pastors, and in which they can exercise their rights regarding the burial of the dead, cannot be applied in the case of the parish of the Most Holy Annunciation, which is incorporated and dependent on the mother church. Considering these decrees, it could perhaps be conceded to a single Chaplain, with the prior permission of the Archpriest, to bury the bodies of the faithful within the boundaries of the parish of the Most Holy Annunciation; but such a privilege could not be granted to the clergy of that same parish, since, by an ancient custom, it belongs exclusively to the clergy of the mother church; and, by a decree of Cardinal Gravina, the exercise of such functions

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has been prohibited to the Chaplains in the church of the Most Holy Annunciation. He then addressed other points of the judgment, and stated that it also rests on the false premise of the independence of the church of the Most Holy Annunciation from the mother church. Concluding his argument, the Advocate observed that as long as union does not signify division, annexation does not denote separation, and incorporation does not express dismemberment, it will never be permissible to doubt that the church of the Most Holy Annunciation, united, annexed, and incorporated into the mother church, should also be considered subject to it and dependent on it.

RIGHTS OF THE CHURCH OF THE MOST HOLY ANNUNCIATION. The Advocate, in opposition to...

[*Latin ed. p. 108*]

In PANORMITANA, certain Curators of the Most Holy Annunciation presented a petition, asserting that the appellation [appeal] was illegitimate, while the judgment [decision] should be considered legitimate and just. And, first demonstrating the basis of his claim, he observed that parochial rights could be defended by a single Parish Priest. "Indeed, those who are appealing are not Parish Priests, and therefore, lacking the right to defend parochial rights, they should be rejected from the very threshold of the court." He recalled that the Communia [parish] was established in the year 1452, so that, when the Parish Priest was reasonably absent, eight Presbyters, with an agreed-upon salary, would perform [his duties]: a duty which, in the year 1653, was voluntarily relinquished through a public instrument. And the Archpriest assumed the burden of administering all the sacraments. Therefore, the Communia does not enjoy any parochial right, which it could defend against another Parish, and consequently, the appellation presented, in the absence of the Parish Priest, must be considered illegitimate and rejected. He maintained that this argument would hold true, even if it were alleged that the aforementioned Priests held some part in the care of souls. For, when a dispute has been contested before the Curia, involving the Parish Priest together with the Clergy, it is from those very individuals that the appellation should be interposed. However, in the petition for the appellation, the name of the Parish Priest does not appear, and therefore, his silence sufficiently indicates that he has accepted the judgment, according to the rule of law 45: "Qui tacet consentire videtur" [He who is silent seems to consent], especially when he is expected to speak. Therefore, since the Parish Priest has not appealed, the Orator argued that the judgment has passed into finality concerning the matter. Furthermore, to demonstrate that the judgment is absolutely valid in all respects, and should be considered legitimate, he observed that the following are required for the substance of any judgment: namely, there must be a plaintiff, a defendant, a judge, and a cause (Cap. *Forum ss.*,

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De Verb. Signi, f. I). Indeed, in this case, the plaintiffs are the perpetual Vicars of the Parish of the Annunciation, the defendant is the Clergy of the Communia, namely, the Parish Priest together with the Presbyters, the ordinary judge is the Archbishop, and the cause is the violation of the parochial rights of the Church of the Annunciation by the Clergy of the Communia. Among the essential elements are also the citation, the commencement of the litigation, and...

[*Latin ed. p. 109*]

PALERMO 109: Testimony, defense, and judgment. A citation was issued by the Archbishop through his Vicarious Caccabi; who, on March 20th, set a peremptory deadline of April 3rd for the presentation of documents, and stipulated that the case would be contested, and the discussion held on the 13th of the same month. The Archpriest of the Collegiate Church declared to the Vicarious, in writing, that he had received the citation. However, since more time was required to examine the documents, it was only on June 13th, in the presence of the Archpriest, the Clergy of the Collegiate Church, and their Patron, on one side, and the Vicars and Curates of the Parish of the Annunciation, on the other, that the case was contested and the controversy formally discussed. On July 24th, 1882, the judgment was delivered to the Archpriest of the Collegiate Church by the bailiffs. The Archpriest himself, in the aforementioned testimony, affirms that everything proceeded correctly. It could not be asserted that the matter had been judged prematurely, for the judge, having vindicated the independence of the Parish from the Clergy of the Collegiate Church, defined each article of law. From these, he concluded that the judgment pronounced by the Curia was entirely legitimate. Demonstrating that the judgment was in accordance with the law, he maintained that the new Parish had been equally united to the Collegiate Church by the Archbishop Marullo. For such a union could not have been extirpative, because otherwise, by erecting the new Parish, the Archbishop would have, by that very act, destroyed it through this union; but neither was it a subordinate union, since the privileges of the primatial see were reserved only to the Collegiate Church. Therefore, he desired an equal union, whereby both would remain united under one Rector, independent of each other, because a parochial arrangement could not have been established at that time. And indeed, Archbishop Marullo, in the year 1584, attentive to the law of the Council of Trent, Session 21, Chapter 4, where it is stated that "in those places in which, because of the distance, or difficulty, the faithful cannot without great inconvenience attend the sacraments, and the divine services," the Ordinary "may establish new Parishes," Session 24, Chapter 13; established

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a new Parish, dismembering the Collegiate Church. But that he...

[*Latin ed. p. 110*]

In Panormitana, it was desired to effect a division according to the norms of the Council, as it is drawn from the words of the Decree. However, the following words demonstrate that a true union was also present: "Although [the new parish] should be distinct from the parish of the mother church in the administration of the sacraments and other offices," it was desired that it should be distinct from the parishioners of the mother church. Since one parish priest could not personally care for the souls in both parishes, it was decided "that two priests should be continuously present for the service of both the church and the parishioners of the parish church of the Most Holy Mary of the Annunciation, who should celebrate the Holy Mass daily, administer the sacraments... bury the dead, and diligently perform all other things necessary for the care of souls." The Archbishop then stated that these two perpetual vicars were true pastors, and, in the absence of a suitable parish priest, the vicar of the mother church was, in name only, called the parish priest of the new parish, and he demonstrated this by reserving to himself and his successors the power to nominate and approve them. He rightly and justly made this decision, both because, at the very foundation, the founder could impose any honorable conditions, even contrary to the Constitution of St. Pius V, *Ad eœequendum*, of the year 1567, which states that perpetual vicars should be appointed by the parish priest and confirmed by the bishop, and also because the Council of Trent granted to the bishops the power to provide "in another more suitable way, as the circumstances of the place require." Therefore, it is true that this union was brought about due to a temporary lack of a suitable priest, so that it seemed more useful at that time to consult with the vicars, according to Chapter 13, Session 24: "In parish churches, of which the revenues are so small that they cannot satisfy the necessary expenses, the bishop will take care that... by the assignment of primicias or tithes, or by the contributions and collections of the parishioners, or by any other means that he may deem suitable, there is provided only what is sufficient for the needs of the rector or the parish." The laws of the Church, therefore, are not violated by a single parish.

[*Latin ed. p. 111*]

In PANORMITANA, it is observed that the Curia's judgment, as cited in Bouix, De Parocho, page 193, states: "Although it may be more expedient to have a single Pastor in each Parish, this unity does not seem to be essentially required; indeed, it is not demanded by positive law as a rule, which should be subject to no exception, especially when perpetual Vicars are present in another Parish." Therefore, the advocate maintained that there should be no doubt that the division of the Parish, according to the form

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established by the Council of Trent, had been completed, and that all had consistently understood the decree in this sense, and that the judgments of the Tribunals had repeatedly confirmed this. Having demonstrated this, the advocate argued that the objections of the opposing party were entirely unfounded, and that the grievance of the Chaplains of the Annunciation could be easily resolved. For they request, as a body legally and canonically existing, to be permitted to accompany the bodies, as they are called by the deceased's parents. However, the Clergy of the Matricis Parish wrongly deny this, when the sacred canons grant to relatives or heirs the right to call to the funeral those whom they prefer, provided that the deceased's Pastor is not excluded. The Sacred Congregation of the Council, on August 29, 1601, already held that "Pastors ought to call Clerics designated by the heirs to funerals, and not others." And in 1617, it declared that "the heirs of the deceased may call the number of priests they deem fitting." The same was established by the civil law of the Kingdom of Naples on November 11, 1751, as stated by Nicholas, Civ. Inst., book 4, title 24, number 25, which is in perfect agreement with canon law, chapter penultimate, concerning burials, paragraph 6. Therefore, the Presbyters of the Matricis Parish were acting unjustly in excluding the Clergy of the Annunciation Parish from the funeral of parishioners of the Annunciation, when the deceased was to be buried outside the walls, and when relatives of the deceased had invited them. Nor can the judgment of the Tribunal of 1787 be invoked, which holds that it pertains to the Matricis Parish to accompany bodies to be buried outside the walls, up to the walls that the deceased's Pastor has accompanied.

[*Latin ed. p. 112*]

112. In Palermo, the Archbishop could not have reversed this decision if the circumstances remained as they were at that time. But today, all bodies must be buried in the public cemetery, which, according to several decisions of the Sacred Congregation of Councils, is the proper place for the parish church. Therefore, the requests of the Clergy of the Matricis [i.e., the Cathedral Chapter] cannot be granted in any way. Indeed, if formerly the parish priest and the clergy of the Annunciation accompanied the bodies of the deceased from their own district to the final resting place in the city, it now necessarily follows that they must accompany them to the cemetery, according to the words of the Sacred Congregation of Councils, Volume V, Apostolic Constitution VI, page 222, in the sentence of the Tribunal cited: "When the parish priest is present at the public cemetery with the deceased, he is in the place of his own jurisdiction; and there he can exercise all the acts of jurisdiction over the deceased that he would exercise in his own parish cemetery." This doctrine is based on the principles of law, of which the first is: the rights of the parish priests remain intact through public cemeteries, ibid., Volume 1, paragraph 85; the second

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is: that public cemeteries, recently introduced, are considered to be the place of the parish cemetery, ibid., Apostolic Constitution VI, cited above. It does not matter that the parish priest of the deceased must pass through another parish to reach the public cemetery; for the Sacred Congregation of Councils has decreed, as Ferraris notes in his Bibliotheca Canonica, under the word "Parochus," Article 3, number 36: "The parish priest can, for the purpose of bringing the body processionally to other churches, freely pass through any parishes, with the stole and cross raised, even without the permission of the parish priests." Several more recent decisions of both the Sacred Congregation of Councils and the Sacred Congregation of the Eastern Churches are in agreement with this provision. Furthermore, the priests of the Annunciation requested that each of them be allowed to celebrate Mass and perform functions in any church within the district, of which he is the rector, deputy, or chaplain. But the Clergy of the Matricis denied this, adhering to Article 10 of the privileges. However, everyone easily perceives the difference between this request and Article 10, since the parish priest cannot prevent the rector of a church located within his parish from performing those functions that are parochial.

[*Latin ed. p. 113*]

PALERMO 113: The rights are not infringed. It is well known that the Holy Roman Church issued a decree "Urbi et Orbi" in the year 1703; under number 3, the question is asked: "Do confraternities established in public churches have any dependence on the parish priest with regard to their functions?" and the answer was: "No." Similarly, under number 4, the question is asked: "Do confraternities established in chapels, both public and private, separate from parish churches, have said dependence on the parish priest with regard to said ecclesiastical functions?" And the answer was: "No." And under number 10, it was established that the celebration of solemn Masses, whether for the living or for the dead, is not among the rights of the parish. These decrees of the Holy Roman Church are in complete agreement with several resolutions of the Sacred Congregation of Councils. The chaplains of the Most Holy Annunciation requested that the administration of Baptism to infants, born within the district of the same parish of the Most Holy Annunciation, be prohibited to the chaplains of the parish. Such a request had long ago been implicitly resolved in the very decree of Archbishop Marulli, who had established a free and independent parish; and explicitly in several subsequent pronouncements of the ecclesiastical tribunal and of the monarchy. Finally, the same chaplains requested that each parish write down the names of the deceased of its own district in its own records. The Curia of Palermo, considering that in these two requests the exercise of those rights pertaining to the parish church was being sought, approved them. Considering these and other matters, the question was raised whether the opinion of the Curia of Palermo of July 17,

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1882, should be confirmed or rejected in this case.

RESOLUTION. The Sacred Congregation of Councils, after careful consideration, on April 5, 1884, decided to respond: In the opinion of this Congregation, it is fitting that the Archbishop, as soon as it is permissible for him, establish in the church of the Most Holy Annunciation, Act, Volume XVII, page CXOV. 8.

[*Latin ed. p. 114*]

In PANORMI, the true parochial benefice, to be conferred according to the law, is to be maintained, respecting the rights of matriculation in favor of the Church of Saint George. Furthermore, the Archbishop shall provide for the expenses of the first instance litigation in a just and equitable manner. (1) From LUCANA, dated May 10, 1884. The confraternity of Saint Anthony in the town of Viareggio, in the archdiocese of Lucania, established in the parochial church of the same Saint, reported to the Sacred Congregation of Councils on September 7, 1881: that a confraternity of the Most Holy Annunciation was established in another church; and that, by ancient custom, this confraternity had participated in processions and offered candles; but now it refuses to participate unless the parish provides the candles, and unless it is granted precedence over the confraternity. This, the reporting confraternity stated, has caused scandals, and it implores the Sacred Congregation to deign to consider the matter. The Archbishop, when questioned, reported that the confraternity of the Most Holy Annunciation was established in the year 1621, and is under the protection and patronage of TUTELA.

(1) Secular questions which arose at that time would not have occurred if, from the beginning, the Ordinary had separated the true parochial matrix and had established a new parish, entirely distinct from the first. This remedy, by which all disputes and contentions may be appeased, is indicated by the prudence of the Most Eminent Judges, who responded that the church of the Most Holy Annunciation should be erected into a true parochial benefice, to be conferred according to the law. This judgment confirms the jurisprudence which, with respect to separations, has prevailed for nearly half a century. Formerly, separation was considered an extreme remedy; so that, even if there was a just cause, the church was not subjected to separation, whenever the spiritual needs of the people could be met by the presence of a chaplain in some chapel. But the most recent jurisprudence, wisely followed by the Most Eminent Judges, is more lenient, and is more suited to our times. For the depraved morals of careless youth, and the Masonic sects, which, like ravenous wolves, devour the flock of Christ, clearly demonstrate the need, if not an absolute necessity, for increasing the number of pastors. Among the pastors of the people, it is

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clear that true pastors are preferable to vicars.

[*Latin ed. p. 115*]

LUGANA 115: The matter pertains to the governance of civil affairs. Consequently, the Constitutions of that same institution, reformed in the year 1832, obtained such great approval from civil authority; whereas the reformed Constitutions of the year 1878 lacked all approval. After the French invasion at the beginning of this century, the sacred functions were interrupted, but shortly thereafter, the Sodalitas [Brotherhood] resumed them. When the Sodalitas of St. Anthony was canonically established, questions concerning precedence arose; which, although I have done everything, the Archbishop says, to resolve peacefully, proved difficult to settle. With these things in mind, the Sacred Congregation [Sacra Congregatio] decreed that the Sodalitas of the Most Holy Annunciation should submit its new statutes for the approval of the Archbishop, who should take care to resolve the dispute concerning precedence in a just and equitable manner. Therefore, the Archbishop obtained from the aforementioned Sodalitas that its own statutes would be submitted for its approval. He also endeavored to resolve the dispute concerning precedence in a just and equitable manner. However, when he observed that the desired concord between the parties could not be brought to fruition, he decreed: that the processions for the feast of the Titulus [patron saint], the Invention of the Holy Cross, the holy days of Friday, and the Death of Jesus should belong to the Sodalitas of the Most Holy Annunciation, occurring every third year. The processions for the feast of the Titulus, the Most Holy Rosary, and Rogations should belong to the Sodalitas of St. Anthony. The procession of the Most Holy Body of Christ, which belongs to the Sodalitas of the Most Holy Sacrament, should be attended by both of the aforementioned Sodalitates, each with its own vestments; but the Sodalitas of the Most Holy Annunciation should have the first place after the Confraternity of the Most Holy Sacrament. The other Sodalitas may participate in the processions of the other, provided that it maintains its proper place and brings its own offerings to be displayed. A Synopsis of the Dispute: The patron chosen by the Sodalitas of St. Anthony endeavored to demonstrate, with greater force, that the archiepiscopal decree should be confirmed. And first of all, it presented *DEFENSIO SODALITII S. ANTONII* [Defense of the Sodalitas of St. Anthony].

[*Latin ed. p. 116*]

116. LUGANA, according to the disposition of the Council of Trent, Session 25, Chapter 13, concerning Reforms, where it is stated: "All controversies concerning precedence, which frequently arise to the greatest scandal... in public processions... the Bishop, setting aside all appellations and without regard to any objections, shall resolve." Hence, Sperelli, Bishop of Gubbio, in decision 179, number 6, states: "The opinions of such Bishops

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are to be considered most carefully, because it is the duty of the Bishop to resolve controversies concerning precedence... in processions or other matters that arise in the burial of the dead, and indeed in a straightforward manner and without any display or semblance of judgment, and with all appellations set aside." Therefore, since the Archbishop of Trent, adhering to the prescription, resolved the controversy with his decree, he maintained that it was in accordance with the law and with the purpose of both Sodalities, demonstrating that the Sodality of the Most Holy Annunciation had in mind the aforementioned statute when assigning its own processions, a statute that was published in 1878 and approved on March 1, 1882, by the same. Furthermore, that the Archbishop assigned the procession to the Sodality of St. Anthony on the feast of its titular saint is most consonant with the law and the statute, since both require that the Confraternity venerate the titular and patron saint with special devotion; all the more so because, as the titular of the Church in which the Sodality is established, and as the patron of the city, he is honored. Regarding the supplication of the Most Holy Rosary, it should be noted that this feast is solemnly celebrated in the parish church. Since the Sodality of St. Anthony is established there, its right to hold a procession must pertain to the same. This also should be determined regarding the Rogation Days, which, according to the decision of the Sacred Congregation of Eastern Churches and the Roman Rites of March 12, 1601, are included among the general processions. Indeed, these are the processions proper to the parish church of St. Anthony, which, according to the first Provincial Council of Milan, begin at the major church of the place and return to the same. Therefore, the Archbishop, having followed the rule of law in the assignment of processions, assigned to the Sodality of St. Anthony the processions proper to the parish church in which it is established.

[*Latin ed. p. 117*]

LUCANA 117. Non debeatur objicienti, quod Archiepiscopus, in primo et secundo articulis decreti, facultates suas excesserit; siquidem, in approbatione statutorum, potestate eadem mutandi sibi reservavit. Sed improprie asseretur, quod Antistes Sodalitio ss. Annuntiatae iniuriam decreto suo irrogaverit: et sane, ad memoratas processiones, praevia Parochi invitatione, accedebat; quod octuagenarii testes evincunt, et ipsa Sodalitas confitetur, dicens, Parochum pro tempore curasse, ut eadem interveniret. Verum est, invitationem ex ipsa rei natura, nemini jus praebet, ut semper invitetur, ex quo libertatem in eo qui invitat praesupponit. Praeterea, invitationem, cui Sodalitas innititur, est conditio, ob quam contendit, processiones peragere, et proprias esse. Atque, « conditio sive tacita sive expressa », impedimentum ad ortum obligationis infert; Sperelli, Dec. 40, n. 4, 1, et est vulgare adagium, "Conditio nihil ponere in esse." Posita igitur invitationis conditio, nullum jus Sodalitio ad processiones peragendas

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adducere potest. Nec ex invitationis consuetudine, jus aliquod adversarii assecuti sunt. Etenim, consuetudo obligatoria, nulli pacto exurgere potest, ex actibus facultativis, qui voluntati dumtaxat innituntur. Quare, Canonistae passim docent, cum Constantino, in voto 447, n. 84: « Consuetudo coactiva non inducitur ex actibus facultativis », et clarius, Surdi, in Consilio 127, n. 81: « Per actus merae facultatis, longo tempore continuatos, non introducitur consuetudo, quia non apparet per hos actus, quod voluerim iuri meo praeiudicare, cum utar facultate mihi concessa. » Quod constanter retinuit s. Rota, ut in Dec. 478, §. 11, rec.: « Consuetudo, ut obligandi vim habeat, coactiva non facultativa esse debet », in Calaguritana Decimarum S. Petri, 21 Iunii 1697, coram Molines; in Caesenaten. seu Ariminen. Iuris privati, 16 Iunii 1743, coram Calcagnino, et in Asculana Iuris privati, 8 Iunii 1751, coram Contada. Inutile igitur est, ut adversarii, ex consuetudine invitationis paroeciales, processiones suas esse contendant.

[*Latin ed. p. 118*]

118. The LUCANA Society, and unjustly, the Society of Aversa, complain about what was decreed concerning the procession of the Most Holy Body of Christ. For it is received among all that, in processions of the Eucharist, this confraternity should precede. "The Confraternity of the Most Holy Sacrament ought to precede all others in the feast of the Body of Christ and in other processions in which the Most Holy Sacrament is carried." Bassi, *Epistolae Anagninae*, De Sodaliis, question 11, section 5; and rightly: "since it was especially instituted to associate with and immediately serve the Sacrament of the Most Holy Eucharist, and therefore, in such acts, it ought to be preferred above all others, as its own proper duty." Pignatelli, volume 4, *Consilia*, 196, number 1. Indeed, the Society of Aversa itself admitted this in agreement with the Confraternity of the Most Holy Sacrament, beginning in the year 1826. Therefore, this part of the decree is entirely unjust. The decree does not offend the law concerning the offering of candles; for in article 4 of the aforementioned agreement, it is stipulated that the societies are obligated to provide candles to their own members. Indeed, what has once pleased, cannot displease more. For nothing is more suited to human faith than to preserve what has been agreed upon by mutual consent. L. Non minorem. Furthermore, the Code of Transactions states: "Therefore, although an agreement can be dissolved by mutual consent, it is not permitted for one party to withdraw without the consent of the other, even in the absence of a rescript from the Prince." L. 5, Code of Transactions. Therefore, the Archbishop rightly sanctioned this. Furthermore, this is in accordance with practice and custom. And indeed, the Society of Aversa has, from time immemorial, carried its own candles in processions; a custom which is attested by the writings addressed to the Society of the Most Holy Sacrament, and to the Sacred Commission of the City, as can be seen from the summary. But custom, especially ancient

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custom, has the force of law, since it derives its force from the will of those who perform certain acts, in order to create an obligation. Leg. 32 ff.

[*Latin ed. p. 119*]

LUGANA 119 leg. Indeed, since the matter is of long standing, as is evident from the testimony of the opposing Sodalitas, it has acquired the value of a true and legitimate title; and therefore, the Parish Priest of St. Anthony and the recently established Sodalitas can rightfully claim the title of "making the world a better place." L. In summa 2 ff. Concerning water and the preservation of rainwater, the recent Rota, part 1, decision 677, number 4, and Cardinal De Luca, book 15, discourse 21, number 50. Therefore, the Orator stated that the opposing Sodalitas presented an undeniable observation in favor of the Parish Priest and the Confraternity of St. Anthony, not only in a literal and presumptive sense, but also in a prescriptive one. Consequently, adhering to law and practice, the Archbishop decreed that the opposing Sodalitas should present the document. It was not objected that the advocates of the Most Holy Rosary had sometimes yielded to the demands of the Sodalitas of the Most Holy Annunciation and had presented documents contrary to custom. For this is a particular act of individuals, arising more from piety, against which the Parish Priest immediately protested. Furthermore, the act of one cannot be imputed to the detriment of another, nor can an unjust condition be imposed upon one through another, according to Lege ff. 74 De reg. iuris. Therefore, in no way is the Parish Priest or the Confraternity of St. Anthony obligated to provide the opposing Sodalitas with the document. Moreover, the Archbishop decreed that the Sodalitas of the Most Holy Annunciation should have the second place after the Confraternity of the Most Holy Sacrament. Although the members of St. Anthony have achieved [something], the Patron observed that the Sodalitas of the Most Holy Annunciation submitted its statutes for the Archbishop's approval on March 1, 1882, and therefore, from that day forward, it should be considered to have canonical existence, since Confraternities are to be established by the Supreme Pontiff or by the Bishop. In contrast, the Sodalitas of St. Anthony was instituted by the Archbishop on August 16, 1880. Furthermore, according to the esteemed Bassi, when establishing precedence, the quality and antiquity of the establishment must be considered. If the Archbishop's approval is lacking, the Confraternity cannot be called an ecclesiastical one. Therefore, since the Confraternity of St. Anthony was approved on August 16, 1880, and the other, that of the Most Holy Annunciation, on March 1, 1882, then...

[*Latin ed. p. 120*]

120. LUCANA argues that the patron should be given precedence, and that this precedence should be respected. This is all the more necessary, given that the members of the confraternities have openly declared that

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their confraternities are lay organizations, and that they will remain so. In the final article of the decree, it is stated: "The second confraternity may participate in the processions of the other, as much as it wishes, provided that it occupies a place behind, and bears the expenses of the ceremony." The patron argued that this was also in accordance with law and custom, as it immediately follows from the preceding articles. Therefore, the Ordinary rightly prescribed certain conditions to the confraternity that wished to participate in the processions of the other, in order to prevent any future disputes. Indeed, lay confraternities may be invited to processions, but they are not obliged to participate; Ricci, *Sol.* 308, no. 5. And it is up to the Bishop to decide what is expedient to avoid scandal. Moreover, Ioan. Antonelli adds that "this power belongs to the Bishop, even if no scandal results from the aforementioned disputes, *lib.* 2, *par.* 6, *cap.* 5, no. 9, *de iurib. Clericor.*" Therefore, the advocate argued that the decree issued by the Ordinary should be upheld. This is also evident from the fact that the Archbishop resolved the dispute in a fair and equitable manner. It is true, as the Rota declared in decision 360, no. 3, before Ratto, that equity often mitigates the strictness of the law. Therefore, since the Ordinary, considering both the particular circumstances of the place and the mandate of the Sacred Congregation, resolved the dispute, his decree should be approved.

DEFENSE OF THE CONFRATERNITY OF THE ANNUNCIATION. The advocate, defending the right of precedence granted to the confraternity of the Blessed Virgin Mary, who was greeted by the Angel, presented a summary of his arguments, demonstrating the confraternity's most ancient origin and its ecclesiastical approval, especially through a document from the same Curia. He testified that this confraternity originated in the year 1621 and has its own Constitutions, which he presented in printed form.

[*Latin ed. p. 121*]

LUGANA, established in the year 1707, with the confirmation of the Most Reverend Cardinal Spada on May 3, 1710, who confirmed it, and the ancient Constitutions previously approved by the Most Reverend Vicarius Flaminio Nobili on September 25, 1685, etc. Furthermore, from the same document, it is clear that the Brothers are interested in the parish church with lights on May 5th and 6th, during the week leading up to the procession, as well as on the Feast of Saint Anthony and on the Vesper Vigil of Saint Anthony; therefore, it was noted that the processions belonging to the Sodality of the Most Holy Annunciation are those which are listed in the statutes. And so, it adds, that this Sodality is obligated and bound to carry out these processions, as the Archbishop himself confirmed them in the reformation of the statutes. Presenting, however, a secular observance as an adequate thesis criterion, he noted external circumstances and certain concessions or limitations, which, however, are not contrary to the Council of Trent, Session 8 on reform, and should not be confused with

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ecclesiastical acts, as taught by Bassus on sodalities, Question 8, number 2. Especially because it must be considered that what was observed was in conformity with ecclesiastical discipline, namely the Constitution of Gregory XIII, beginning with the words "- Excit -," which declares the precedence of confraternities among themselves, subject to a clause and a decree that renders it invalid. Having noted these and other reasons, both external and internal, the Orator endeavored to demonstrate that the decree of the archiepiscopal court should be annulled on three grounds. Therefore, in the first section, he affirmed that the decree could not be sustained in light of the purpose that the Council of Trent had in mind, and due to the lack of jurisdiction. Among other things, he considered that the decree could not be said to have been issued by virtue of the Council of Trent, Session 25, chapter 13, on reform, which commands that the Bishop should settle disputes without delay, so that no scandals are caused in public, according to what is stated by Gallemartius in the declaration of the same chapter, and by Bassus, cited above, op. Question XI, number 6, although the Bishop, in virtue of the conciliar disposition, can...

[*Latin ed. p. 122*]

122 LUGANA, for the time being, imposed silence, and granted the other party a more prominent place, assigning it accordingly, with the declaration that this action did not intend to prejudice the rights of either party. However, he adds that the decree was issued two years after the controversy arose; therefore, there was no need to give it a definitive legal standing, attributing a certain place to the Brotherhood of the Most Holy Annunciation, canonically established since the year 1621, since this alone had and has the right to associate. Although, even in cases of necessity, each party must have their rights respected, when it is clearly established that the Constitution and observance give precedence to the older one; Riccius, dec. 90, n. 1, Oallemar, *cit. loc. verbo amota*; Tusç. de Visit., L. 2, cap. 15; Frane., Leo, d. cap. 13, n. 8; Passerini, quaest. 189, Tom. 3, etc. But he argues more forcefully that the decree cannot be upheld because the Ordinary exceeded the mandate of the Holy Congregation, and offended the jurisdiction of the same, which had already been preempted; indeed, if the offices of composition had been annulled, he affirmed, he should have done nothing other than to inform the Holy Congregation of the results and abstain from any proposed judgment or decree, lest the expressly given mandate be extended to another cause not expressly mentioned, according to the most accepted principles; Bota, dec. 546, n. 3, p. 2, etc. But not only did he maintain that the mandate was exceeded, but also that the established judicial form in substance was not observed, because the Bishop of Lucanus lacked jurisdiction when the Holy Congregation had already preempted the matter since September 1881. Therefore, while the judgment is pending before the higher authority, the hands of the lower authority are bound.

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Indeed, he emphasizes that the law of preemption is so powerful and rigorous that anyone, after having approached one Congregation, should flee to the other, and should not act in any way, and should be subject to the most severe penalties, as more fully explained by the Holy Congregation in Bossanen, on June 11, 1738. From these points, the Advocate concluded that if there is no annulment of the decree of one Congregation with regard to preemption.

[*Latin ed. p. 123*]

In LUCANA 123, it is stated that a decree issued by an inferior judge, which invalidates the rights of another, is null and void, and that no decree should be issued by a lower court that would confuse the jurisdictions of the first and second grades. In the second section, the internal justice of the cause is established, and it is affirmed that the Sodalitium Sanctissimae Annuntiationis has been canonically approved for centuries by two, and more, Cardinals. To this end, it is argued that the document produced by the archiepiscopal curia itself is sufficient and more than sufficient, namely: "In this Church, a society of the Blessed Virgin Mary, greeted by the Angel, under the title of the same Virgin, has been established, which uses a white habit, and its origin dates back to the year 1621, in March." It possesses its own Constitutions, which it has presented in printed form, along with the confirmation of the Most Reverend Cardinal Spada on May 3, 1710, who confirmed them, and the oldest Constitutions, which were formerly approved by the Vicar Flaminio Nobili on September 25, 1685. From this, it is deduced that a canonical approval existed at a time long past, arising from an equivalent act, which is sufficient to replace the original document that perished during the French Revolution. Furthermore, it is stated that the General Vicar is empowered to approve the erection of confraternities, since, by virtue of his office, he has the authority, in the name of the Curia, to expedite matters pertaining to the ordinary jurisdiction of the Bishop, as stated by Huth, *Jus Canon.*, Lib. V, Title 28, question 3. Moreover, once an erection has been approved, it should not be re-approved over time, nor do accidental modifications invalidate its essence. Furthermore, it is clearly established that, for the erection of confraternities, the approval of a superior ecclesiastical authority is required, either explicitly or implicitly, as stated by Ferraris, *Voc. Confraternitas*, n. 1, and by the Rota in Pistorien., January 13, 1768, in the case of *de Vag*, and that the other is not lacking. Indeed, two Cardinals, Spada and Spinola, as confirmed by the Curia, confirmed the ancient Constitutions, while the other recognized the Sodalitium during a pastoral visitation. Therefore, they and their successors have always held that the society was originally established, as if a canonical approval

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had been expressly granted.

[*Latin ed. p. 124*]

124 LUGANA Indeed, it is the nature of any prescription that it be traced back to the time the right was first exercised; Mantica de tacit. et ambig. g. L. IV, title 6, n. 65. This is true, but setting aside these considerations, for the canonical existence of the Sodalitas of the Most Holy Annunciation, besides other evidentiary presumptions, and other privileges which are common to other canonically and lawfully existing confraternities, a sufficient document is enough to prove that the aforementioned Sodalitas of the Most Holy Annunciation can demonstrate its existence from a time beyond human memory; although one day before the foundation of another sodality, namely the sodality of St. Anthony, which was established three years ago, would suffice to determine its antiquity. However, suitable witnesses have testified to its long-standing existence, and to its centennial existence, that the Sodalitas of the Most Holy Annunciation has been subject to the authority of the Bishop in the exercise of ecclesiastical functions, wearing the alb and using the seal of the Most Holy Annunciation. This established fact, the theory of law recalls, namely that through centennial observance, any better title in the world can be presumed, on the basis of the possibility of alleging an Apostolic privilege, or any other better worldly title, which is sufficient to allege, without the necessity of providing proof, such a presumptive result arising from centennial possession. By virtue of centennial observance, any better worldly title can be alleged without the necessity of justifying it, because the centennial observance itself serves as proof; De Luca, De Beneficiis, chapter 32, n. n. 2, concerning Canon. Disputations, II, number 2. Hence, among the Canonists, Ursaya states that through centennial observance, the favor of both the Bishop and the Supreme Pontiff is induced; Disputationes Beel. Tom. III, p. 2, disputation 16, n. 181 - there, "ceterum," having been admitted, but nowhere conceded that in the union, "of which we are speaking, the Apostolic favor would be required, from the aforementioned nearly tripled observance, we can allege not one, but a thousand Apostolic favors, and any other better and more useful worldly title, constantly."

[*Latin ed. p. 125*]

LUGANA 12S: It is asserted that all things were done legitimately. Hence, St. Rota, in Decree 962, concerning Molines, number 31, states: "Centenaria is that better title," a title pertaining to the world, by means of which all things are acquired. And in Praenestina, on March 22, 1849, concerning Martínez, it is said: "He who uses a 'centenaria' possession, certainly possesses it by some better and more powerful title, and is supported by law." Do you desire a contract? Do you desire a privilege? All these, and if anything else, are presumed to arise from a 'centenaria'

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possession. Therefore, the Advocate argues, citing the authority of the Sacred Congregation in Lucana Praeminentiarum, on June 25, 1823, §, and also in Faventina Procurationis, that one who possesses a 'centenaria' can allege a privilege; however, one who possesses a privilege cannot allege a 'centenaria.' Furthermore, the Advocate added, if any peculiar claim is introduced, then those acts always prevail which are in conformity with law and established rules; for in the case of non-compliance, that series of acts prevails which is more in accordance with Canon Law. Rota, decree 74, number 22, paragraph 6, refers. Therefore, any abnormality, if it exists, in separate and otherwise irregular matters, is completely eliminated, as stated by Rigan in the register of Divine Canon Law, volume 5, number 18. Gratian, Disputatio 95, number 8, etc. Therefore, the Defender concluded from this point that the initial document of the opposing party was flawed, as if the Brotherhood of St. Anthony canonically existed alone, when the sodality of the Most Holy Annunciation has had a legitimate and ecclesiastical existence for 363 years. In the third section, he proceeds to apply the law, stating the principle that precedence in all processions pertains to the older sodality of the Most Holy Annunciation over the Brotherhood of St. Anthony, and therefore, article 4 of the decree of the Ordinary is not sustainable, because it indirectly subverts a rule established by the Holy See, stating: "The other sodality may participate in the processions of the other, if it wishes, provided it maintains its proper place." Moreover, Gregory XIII, in the general Constitution - Exposcit - precisely ordered the order of precedence among the Brotherhoods.

[*Latin ed. p. 126*]

126 LUGANA declared, and strictly ordered it to be observed, with the clause removed and the decree rendered void. The Orator stated that the Pontiff had been moved to establish a general norm, because controversies had arisen between Confraternities in many cities and in various dioceses throughout the world, and for this reason, in the aforementioned section 3, he had issued the following instruction. "By the fullness of the power entrusted to us, we wish and, by our apostolic authority, we decree that those who possess, as it were, the precedence and the right to precede, (with all reclamations, appeals, and other subterfuges set aside) must precede in processions, both public and private. When, however, it is not proven, or it is not established, that there is a quasi-possession of precedence between Confraternities contending with each other, those who first used the banners in processions, both public and private, must precede, etc." And so, it is decreed that all judges and commissioners of the Holy Roman Church, after having had these matters removed from them, and after having been deprived of any other power or authority to judge or interpret, must judge and define these matters, and that whatever is done contrary to this by anyone, knowingly or unknowingly, shall be declared void and of no effect.

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The Orator confirmed that the Holy Congregation of Rites had followed this general norm, citing decrees from the Gardellian Collection: specifically, the resolution in Nepeta, number 377; and likewise in Thelesina, number 1079. "A disagreement arose between the members of the Confraternities of St. Anthony and St. Conception in the land of Cereti, regarding precedence in processions. It was requested that it be declared to which Confraternity precedence should be given in processions? And the Holy Congregation responded: precedence should be given to that Confraternity which first used the banners, according to the disposition of the Bull of Gregory XIII, which begins with the words 'Exposcit' on July 25, 1583." Furthermore, the Holy Congregation of Rites ordered that this be observed in Lünen, Sarzanen, on June 19, 1639, in Thelesina on March 19, 1611, etc. These decrees were consistently observed by the Canonists.

[*Latin ed. p. 127*]

LUGANA 127, Tom. IV, Constit. 86, and Ferraris, art. V, I, v. C, W, concerning fraternities, no. 31: "Among the fraternities of the laity, that which possesses the right of precedence should precede, and if nothing is established regarding which was first adorned with banners, then the one that first used banners should precede." Furthermore, among the Liturgists, De Herdt, *Praxis Pontificiae*, book III, chapter XXXIII, section 3, no. 214: "Among the fraternities, according to the Constitution of Gregory XIII, July 25, 1583, those that possess the right of precedence should precede, and if this is not established, then those that first used banners should precede. However, in all processions in which the Most Holy Sacrament is carried, precedence should be given to the fraternity of the Most Holy Sacrament, even if it is of more recent foundation, provided that it joins other processions, and then yields its place to the older ones, etc." From all of this, it is deduced that no distinction should be made among any processions, and furthermore, the limitation made in favor of the fraternity of the Most Holy Sacrament confirms the general rule, from the ancient adage: *exceptio firmat regulam*. Finally, examples from this city are presented, which should be followed in this matter. Indeed, the Archsodality of the Holy Banner precedes all other fraternities in all processions and funeral associations, because it was established before all others. And the Archsodality of Saint Nicholas, commonly known as "l'Arcione," although it has diligently served day and night during missions, nevertheless, in the public procession of penance, it proceeds according to the time of its establishment. With these and other considerations, the purpose was to resolve the doubt as to whether the decree in this case should be confirmed or rejected.

RESOLUTION. The Sacred Congregation, after deliberation, decided to respond: The decree should be confirmed, so that, while the rights of the fraternity of the Most Holy Sacrament are preserved, precedence belongs to the Sodality of the Most Holy Annunciation.

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FROM WHICH YOU MAY GATHER: I. In public processions,

[*Latin ed. p. 128*]

128. LUGANO: Concerning processions, private ones as well as public ones, it is necessary that those Sodalities which, by right, ought to precede, do so, since they are in a position of precedence and legal priority. II. If it has not been formally proven that the title of a Sodalitie favors its precedence in processions, then those Sodalities which have previously used palls (or banners) in processions, whether public or private, ought to precede. III. Members of the Most Holy Sacrament enjoy special privileges over other Sodalities; and in processions in which the Most Holy Sacrament is carried, they are entitled to precedence over other Sodalities, even those of older foundation (1). IV. The Sodalitie of the Annunciation appears to have preceded other Sodalities in practice, both in its canonical erection and in its de facto precedence over other Sodalities.

TURIN: FACULTY TO PRACTICE LAW. Dated April 5, 1884. By summary petition. The priest, Anthony, aged 70 years, humbly approached the Most Holy Prince, explaining that since the year 1861 he had practiced law in the tribunals of the laity, because he was deprived of all means of supporting his life; but that in this activity he had not failed to benefit the poor and the clergy, and that he had led a life consonant with the ecclesiastical state, so that the group of lawyers considered him a man of great virtue in all respects. Now, desiring to consult his own conscience, he requests from the Apostolic See a temporary dispensation, and for the future, the permission to practice his profession. The Prelate, having heard the request, considered the following:

COMPENDIUM OF THE FACTS. (1) See Volume II, page 296, in the note, which refers to and cites various documents of the Supreme Pontiffs and decisions of the Sacred Roman Congregations, concerning the Sodalitie of the Most Holy Sacrament. Also see Volume XIII, page 162; where the question of precedence among Confraternities is discussed.

[*Latin ed. p. 129*]

TURIN. On the 12th of [the month], it was inquired whether, from a requested concession, admiration or scandal might arise; and also, whether, and for what reason, in such a scarcity of ecclesiastical men, the orator ought rather to seek a means of honest support apart from the exercise of the ecclesiastical ministry. He responded: that the orator had acted without admiration and without scandal, having been appointed an advocate without the consent of the Apostolic See. However, admiration might arise among the people, inasmuch as the requested faculty was denied to him; for no one doubted that the orator had not been granted Apostolic approval. Regarding the other matters concerning which I was asked, the Prelate said, it should be noted that the orator had already surpassed sev-

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enty years of age, and that, therefore, he could no longer be as well suited for the defense of causes, for the proclaiming of the word of God, and for receiving the confessions of the faithful. Various observations, made in the course of duty, were made both for granting and for denying the faculty of advocacy. Finally, it was inquired how the orator's petitions should be decided. RESOLUTION. The Sacred Congregation, on the 5th of April, 1884, decided to respond: With prior approval regarding the past, and for the sake of future benefit, as long as the orator has obtained a different means of honest support; but in criminal trials, he shall only write and act for the purpose of defense, having received the word from the Most Holy. AVIGNON AND VALENCE. CONCERNING THE PENSION FOR TRANSLATION. On the 10th of May, 1884. SUMMARY OF THE CASE. Peter Francis Xavier de Re'boule de Lambert, Bishop of Saint-Paul-Trois-Châteaux (Tricastinensis) in France, in the year 1779, bequeathed to his universal heir, his great-nephew Charles Francis Pisani de la Gaude, among other things, the sum of 80,000 livres, of which the annual revenue...

[*Latin ed. p. 130*]

130 AVIGNON. AND VALENCE. Funds were established for the education of young men of their diocese who desired to be enrolled in ecclesiastical service. Meanwhile, due to unjust laws enacted by the French Government concerning ecclesiastical property, the aforementioned Bishop, with the addition of a codicil dated December 28, 1790, revoked a pious endowment, since it could no longer achieve its intended purpose. With the restoration of the Catholic religion in France, and with new dioceses established within its territory by the Concordat and Papal Bull, the diocese of Saint-Paul-Trois-Châteaux was suppressed and divided among the dioceses of Avignon, Aix, and Valence, becoming a suffragan of Lyons. Furthermore, when the testator, Pisani de la Gaude, the heir of the Emperor Napoleon, renounced the See of Namur, he obtained from the same [Emperor] that at least a portion of the disposition of his uncle's property, as stipulated in his will, would be restored to him. With these ecclesiastical assets finally settled, as they say, in the year 1806, he established two pensions of 600 francs, secured by public debt bonds (Consolidated inscribed), which were later reduced to 540 francs, and he had the titles of these pensions registered with the metropolitan seminaries of Lyons and Aix, so that they might be used for the support of two young men from the ancient diocese of Saint-Paul, who would devote themselves to ecclesiastical studies in those seminaries. The nominations of the students, however, belonged freely to the Bishops of Valence and Avignon. In the year 1819, the See of Avignon, which had been graced by the long residence of several Popes, was elevated to the dignity of a Metropolitan See, and the See of Valence was separated from Lyons, becoming its suffragan. Therefore, while previously the ancient diocese of Saint-Paul was divided

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between two Metropolitans, now it is subject only to the Metropolitan of Avignon. Hence, it seemed natural that the pensions, which had previously been allocated to two metropolitan seminaries, should now be directed to a single seminary in Avignon. This, in fact, occurred in the year 1827, without reproach, and indeed with the approval of the founder himself, the Bishop of Namur, who was still living, and both pensions were subsequently...

[*Latin ed. p. 131*]

AVIGNON AND VALENCE. The seminary of Avignon benefits from 131 stipends. Formerly, the diocese of Saint Paul of Valence would send a young man to this seminary; however, since the year 1879, the current Bishop of Valence has ceased sending a student, for the reason that he, too, has a seminary recognized by the government where he can be educated. The Archbishop of Avignon opposed this and brought the matter before the Apostolic See. However, the Bishop of Valence, with a few reservations, requested that the stipends for four years, which had been received from the seminary of Avignon, be returned to him. He also requested that this annual stipend be paid in the future to the seminary of Valence, so that a young man from Saint Paul of Tricastin, which is now joined to the diocese of Valence, might be supported.

A Synopsis of the Dispute: The Archbishop of Avignon maintained that the transfer of the stipend should not be permitted, relying primarily on the will of the founder. Indeed, it is admitted by all, and is entirely in accordance with natural law, that the founder of any benefice can, at the very inception of the foundation, establish whatever honest and possible conditions, even if they are contrary to common law; and these conditions, once established, must be observed scrupulously, according to canon 4 of the Decrees, title 13, question 2: "The last will of the deceased must be observed in all ways," and the Council of Trent, session 25, chapter 5, concerning reforms. This, moreover, must be observed all the more by the Bishops, since both of them are obligated by law to fulfill the "extensive wills" of the deceased, as stated in chapter 3 of the book on Testaments, and in title 17 of the same book. Furthermore, civil law agrees in Novella 137, chapter 11. This is the legal aspect. In fact, the Bishop of Namur founded stipends for students from the ancient diocese of Saint Paul, and established them for two metropolitan seminaries, Lyons and Aix. This clearly and expressly demonstrates the founder's will.

[*Latin ed. p. 132*]

132 AT AVIGNON. AND VALENCE. The Archbishop would be acting rightly if he were to consent to the transfer of the pension to the seminary at Valence. Indeed, he said, "This transfer can only be made based on a presumed will of the founder; however, in principle, a presumed will must give way to an expressed will. Therefore, since we have here an expressed

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will, there is no room for a presumed will that is contrary to it." The Archbishop also seems to have a no less important argument based on the long-standing possession and the explicit recognition of its rights by the Bishops of Valence. From the year of the foundation of the pension, namely 1806, until the year 1879, the Bishops of Valence sent students with pensions to the metropolitan seminaries, first to Lyons, and then to Avignon, which, from the year 1827, held the title of the seminary to which the pension had been transferred from Lyons. Therefore, it is not without reason that, after seventy-three years, and with such a practice on the part of the prelates of Valence, the Archbishop asserted the authority of legitimate prescription. Furthermore, if nothing has been attempted against the rights of the seminary at Avignon for so many years, and no legal reason for the transfer has been invoked, then no new reason for a transfer can be offered today, with no circumstances having changed. Finally, the reasons presented by the Bishop of Valence for the transfer are of no importance. First of all, he observed that, since the reasons for the transfer must be based on the presumed will of the founder, they will only be valid if they were not known or foreseen by the founder; those that were known but ignored, cannot in any way be invoked, because a presumption must give way to proof. However, all the reasons presented by the Bishop of Valence were known to the founder, as will be evident from each of them; therefore, they are of no value. It is entirely futile to invoke, in the first place, the will of the Bishop of Saint-Paul-Trois-Châteaux; for, besides the fact that nothing is found in it concerning the location of the pensions, this will, as far as the pensions are concerned, has lost all its legal value due to a revocation clause; although, therefore, the intentions of his uncle...

[*Latin ed. p. 133*]

AVIGNON AND VALENCE. In 133 instances, the Bishop of Namur has more frequently declared that he wishes to fulfill [his obligations]; nevertheless, he himself established pensions from his own assets; and the conditions attached to these pensions are to be solely determined by his own will. He stated that the second argument presented by the Bishop of Valence has no significance, namely, the legal existence of diocesan seminaries granted by the government in 1813, with the exception of the metropolitan seminary. Indeed, when in 1822 the See of Avignon became a metropolitan see, a choice had to be made: either to grant the pension to the seminary of Valence, or to transfer it to the metropolitan seminary of Avignon. However, it is clear that the founder, at that time the Bishop of Tournay, chose the latter, as evidenced by a letter to the Archbishop of Avignon dated January 20, 1826. This will, however, cannot be obstructed by the difficulty raised regarding the meaning of the term "metropolitan seminary." Granted that, speaking canonically, he does not intend the same thing as is stated in French law of March 13, 1804, at least it signifies a diocesan seminary be-

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longing to the metropolitan Church: what, then, can prevent the founder from establishing this pension for the suffragan diocese? Nor does it benefit the other party that the transfer from the seminary of Lyons to that of Avignon was made without the consent of the then-existing Bishop of Valence, and indeed, without his consultation; nor is there an authentic document of the transfer. For the right of the Bishop of Valence always remains the same, both before and after the subsequent transfer, and it is not in any way diminished by this; for he always has the right to nominate someone to the pension of the metropolitan seminary. Indeed, the Archbishop truly stated that the transfer could not have been completed without the consultation of the Bishop of Valence. Two letters exist from the Rector of the seminary of Avignon to the vicargeneral of Valence in 1827, in which he urgently requests that the transfer be carried out as soon as possible. However, it cannot be presumed that the Bishop of Valence was not informed about this matter by his own vicar. Finally, the authentic document of the transfer is found in the very title of the pension.

[*Latin ed. p. 134*]

134 AVIGNON AND VALENCE. The reasoning presented, based on the inequality in the division of the ancient diocese of Saint Paul, which has twenty-eight parishes attributed to Valencia, while only eight are attributed to Avignon, does not seem to rest on a better foundation; and yet, the same pension was assigned to both dioceses for one young man; since, in the transfer of the pension, only the Metropolitan Seminary was considered, and not the number of parishes. Regarding the second doubt, it does not seem that there is a legal basis for the Metropolitan Seminary to exclusively possess the pension, nor does it seem that there is a reason for the Seminary of Valence to restore the fruits received up to now. Since the Seminary of Valence did not make use of this right of nomination, and could freely have renounced it, it should be considered to have relinquished its right. Furthermore, if it is noted that the pension was assigned to the Seminary of Avignon in order to support a young man to be sent from the diocese of Valence, and that this does not prevent the fulfillment of the established condition, then the rule 41 of the laws in V. I. applies: "He is not obligated to him, by whom it does not stand, if he does not do what is to be done by him." Nor does it seem just to demand restitution, since the Seminary of Avignon was made richer; for this happened not through its own action, but precisely through the action of him who could have avoided the loss; and therefore, it is considered to have relinquished it voluntarily. Another external reason, no less important, is added: if there were a basis for restoring the fruits, the way would be easily opened for the Bishop of Valence to evade the will of the founder. For, by neglecting the nomination of the pensioner each year, a reason would be provided for the annual repetition of the fruits, and thus the pension would effectively be transferred to the

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Seminary of Valence. THE RIGHTS OF THE BISHOP OF VALENCE. On the other hand, the Bishop of Valence attempts to demonstrate, through many reasons, the necessity of the transfer, which he claims is entirely in conformity with the presumed will of the founder. Indeed, the wills of the founders are to be scrupulously observed; but, when circumstances arise that the testator did not foresee, it is rightly presumed that the original intention no longer persists.

[*Latin ed. p. 135*]

AVIGNON AND VALENCE. 135. Indeed, the heir of the testator of Pisa, named La Gaude, has repeatedly asserted that he intends to fulfill the intention of his uncle, as expressed in the will, by establishing pensions; and therefore, he has noted that the liquidation was not made in his own name. However, since the will contains not a single word regarding the place to which the pensions were to be assigned, it must be presumed that the heir himself did not determine the place, unless he was influenced by external circumstances; and that, should those circumstances cease, he would certainly wish to return to the simple execution of the will. Furthermore, he stated that the external circumstances that influenced the founder to assign the pensions to the metropolitan seminaries were these. At the time of the establishment of the pensions, in the year 1806, the government recognized one seminary for each province, namely, the metropolitan seminary, which legally possessed this status. The other seminaries, which were diocesan seminaries, and which had not yet been fully restored, did not enjoy legal recognition. Therefore, the founder considered it prudent to secure the pensions for two students by assigning them to the two metropolitan seminaries, which were the only ones then legally existing. However, by law of September 13, 1813, the diocesan seminaries also obtained legal recognition; and therefore, the reason for which the founder, wishing to ensure the security of the pensions, had arranged for them to be assigned to the metropolitan seminaries, seemed to have ceased. Subsequently, the Bishop noted that it was not necessary to insist on the designation "metropolitan seminary": for these seminaries enjoy the same status as the other diocesan seminaries, both in terms of civil law and in terms of sacred canons. Furthermore, it cannot be said that the pious founder preferred the metropolitan seminaries to other seminaries. For, by establishing a foundation for the study of students in the seminary of Lugdunensi, which was then the only one existing in that ecclesiastical province, he stated that he wished to follow nothing more than the intention of his uncle, with regard to the religious education of the youth of the diocese of Saint Paul; therefore, it can rightly be presumed that, according to the will of the testator, the pensions attached should remain with the metropolitan seminaries only

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for the duration of that law.

[*Latin ed. p. 136*]

136. AVIGNON AND VALENCE. It must also be noted that these pensions were paid by the Government under the title of restoring a portion of the founder's revenues from Remboul de Lambert, which the treasury had been obligated to pay in the year 1789. Consequently, according to the law recognizing the metropolitan seminaries, these pensions could not be transferred except to places possessing civil capacity. Furthermore, while the Bishop of Namur, on March 21, 1823, called attention to the transfer of the pension from Acqui to the seminary of Avignon, he made no mention of the pension inscribed for the seminary of Lyons for a cleric from Valence. Therefore, this circumstance, which is contrary to what is alleged, rather seems to favor the seminary of Valence. Moreover, while the transfer from Acqui to the seminary of Avignon had been completed with the consent of both archbishops on October 13, 1815, on the other hand, no action was ever taken to transfer the pension from Lyons to the seminary of Avignon. It is reported that in the year 1827, on March 28, the Rector of the seminary of Avignon was in disagreement with the Vicargeneral of Valence regarding the Bishop's reluctance to carry out the transfer, and he was urging him to do so. Furthermore, from letters dated December 22, 1839, and February 7, 1840, it is found that the Archbishop of Avignon implicitly recognized the necessity of a formal act of transfer; however, since no document could be found, either in the archives of the Archbishop, or in the offices of the notaries, he requested that it be provided by the Bishop of Valence, who should have been involved in the act; but this could not be done, because no act of transfer had ever taken place. Therefore, given these circumstances, it seems that the Bishop of Namur could not, on his own initiative, change the established conditions and agreements relating to the pension for the diocese of Valence in the year 1805. Furthermore, it seems unjust to obligate the Bishop of Valence to send students to the seminary of Avignon, and less can be said about the transfer.

[*Latin ed. p. 137*]

FROM AVIGNON AND VALENCE. In the year 137, the Archbishop of Avignon decreed that twenty-nine parishes, formerly belonging to the suppressed diocese of Saint Paul, be united to Valence, while only nine, including the very See of Saint Paul, were united to Avignon; and both dioceses were granted an equal pension. Finally, it is not understood how any Bishop could wish to obligate his subjects to attend a foreign seminary, to devote themselves to ecclesiastical studies far from the eyes of their legitimate Superiors, without any connection to those with whom they must afterwards live. However, the current Bishop of Valence acts in this manner, so that, for this reason, five years ago he ceased sending a student to the seminary

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of Avignon; considering it less harmful to suffer the loss of this support than to have the obligation of sending his subjects to a foreign seminary, with the burden of afterwards providing for them, concerning whom he could not ascertain their knowledge and morals. This, indeed, does not seem entirely in accordance with the decree of the Council of Trent, which strictly commands that Bishops should oversee the studies and morals of the clergy, so that they may become worthy and fit for the ministry of souls. Hence, it is clear that the request of the Bishop of Valence is entirely in conformity with the presumed will of the founder, and is consonant with sound reason and the law of Trent. Regarding the second point, the Bishop of Valence requests the fruits of the pension, amounting to five years, which have been received from the seminary of Avignon, in favor of his own seminary. Since these funds were established for the benefit of the young men of the diocese of Valence, it is not permissible to divert these funds against the will of the founder. Since, therefore, the clergy of Valence have a right to these funds, they cannot be deprived of this right; and since this right is accompanied by the corresponding obligation of expending the funds for their education, it clearly follows that there is an obligation to return the funds received up to now, since that obligation has not been fulfilled. Furthermore, it should be noted that the Bishop of Valence has, in the meantime, provided for the education of these young men in his own seminary.

[*Latin ed. p. 138*]

138 AVIGNON AND VALENCE. And neither did the Avignon seminary incur any expenses; therefore, the retention of the interest for five years seems unjust, since, from these funds, the Valence seminary became richer with the loss of the Avignon seminary. - Having considered these reasons on both sides, the following questions were proposed for clarification. I. Whether there is a reason to grant the transfer of the pension in favor of the Valence seminary in this case. And, to the extent that it is affirmative, II. Whether there is a reason to restore the interest of five years to the same seminary in this case. RESOLUTION. The Sacred Congregation; of Councils, after deliberation on May 10, 1884, decided to respond: To the first, negatively. To the second, conditionally on the first. FROM WHICH WE GATHER. I. That it is right, in every way, to observe the pious wishes of testators; even if, at the very beginning of the establishment of some benefit, the testators themselves imposed conditions contrary to common law, provided that they are honest and possible. II. That there is a principle of law that the expressed will of the testators must yield to the presumed will; especially if arguments are brought forward to support this presumed will, which were known to the testators, and which they themselves set aside. III. That in this matter, no new arguments can be presented upon which to base the presumed will of the testator; for all matters concerning

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the seminaries and dioceses were known to the Bishop of Namur, as well as to the founder of the pensions.

[*Latin ed. p. 139*]

139. FACULTY OF RECITING THE MASS IN THE GRATIANOPOLITAN DIOCESE. May 10, 1884. By summary petition. COMPENDIUM OF THE MATTER. The priest of Chaloin, the parish priest of the locality commonly called Cour and Buis, prostrated himself humbly before the Most Sacred Prince, and explained: "That, according to the custom established in the aforementioned parish, he is accustomed to repeat the Holy Sacrifice of the Mass on November 2nd, in commemoration of All Faithful Departed Souls; that is, by celebrating one parochial Mass in Cour, and another in the chapel of the section of Buis. However, now he seriously doubts the existence of a legitimate Indult for such a faculty of repeating [the Mass], and earnestly implores that this faculty be benignly granted to him." The petitions were commended to the Vicar General. Synopsis of the Discussion. It is not unknown to anyone that the Church expressly prohibits the same priest from repeating the Holy Sacrifice of the Mass on the same day. Nor does the custom invoked avail anything for granting this faculty; for, as testified by the Vicar General, it does not extend beyond approximately thirty years. Indeed, according to the doctrine of the Pragmatics, a custom is only considered immemorial, or at least centennial, which acquires, by its very nature, the value of a true and legitimate title, and which leads one to presume Apostolic approval; *De Luca de Reg. disc. 47 n. 11; Reiff, de Praescript. n. 144; Rota dec. 574 n. 11 part. 19.* GRANTED. On the other hand, it is sufficiently known that a singular privilege exists, by which all priests, both secular and regular, in the kingdoms of Spain and Portugal, are granted the faculty to celebrate a single Mass on the day of commemoration of All Faithful Departed Souls. GRANTED.

[*Latin ed. p. 140*]

140. CELEBRATING MISSES IN GRATIANOPOLIS. Therefore, it seems that nothing prevents the granting to the parish priest the faculty of celebrating the Mass on the aforementioned day, especially if he receives no compensation for this service. Indeed, there are not lacking particular reasons for granting this favor. Firstly, there is the aforementioned custom, which, although not of *centenaria* (hundred-year) origin, is nevertheless of long standing, and which moreover cannot now be abolished without fear of general irritation among the people. Furthermore, there exists a cemetery near the aforementioned chapel, which has served until now for the burial of the deceased of that section of Buis. Considering these and other matters, and especially because it is now the desire of all that the Holy See extend the privilege enjoyed by the Spanish, the question was asked as to what response should be given.

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RESOLUTION. The Sacred Congregation, on May 10, 1884, decided to respond: "For a period of five years, provided an agreement is reached with the Most Reverend [Legion]."

RESIDENCE OF THE LEGION. On May 10, 1884, a collegiate chapter of the Legion is held at the church of Saint Isidore, which received its life and form from the Bull of Pope Eugene III and from the decrees of the Comitia held in the town of Patencia. The singular status of this chapter exists, provided that the canons, while being drawn from the secular clergy, are appointed alternately by the Bishop and by the King of Spain, as patron, and that each of them receives a pension from the civil government, which serves in place of a benefice; in return, they are obliged to reside together under a certain rule, which is said to be that of Saint Augustine. And after they are appointed, they do not obtain canonical institution unless they have spent a full year living at the church.

COMPENDIUM OF THE MATTER.

[*Latin ed. p. 141*]

LEÓN. 141, according to the norms of a certain novitiate. From this, this Regular Collegiate Church is commonly called. And its status was more recently confirmed in the Concordat of the year 1851, and in the Bull *Inter Plurima* of Pope Pius IX, dated July 29, 1859. However, it is asserted that the Bull of Pius IX remains without effect, perhaps because in the year 1835, the religious house was occupied by the Provincial Council, by order of the civil authority; and thus, the canons were removed from the house, and communal life ceased, and the novitiate could no longer be completed, indeed, and those who were subsequently named canons were unable to obtain their institution in the benefice, which was the consequence. With these historical facts recounted, the series of events that give rise to the present controversy is explained. When the present Bishop was appointed to the See of León, he discovered this problem: several priests, who were either in León or in another diocese, engaged in the care of souls, had been named by the Royal Patron to the Canonry of St. Isidore; and were therefore residing in León and receiving a pension; but they were not abandoning their parishes, but rather retaining them, perhaps because they had not yet obtained their institution in the canonry; therefore, several parishes were entrusted to vicars indefinitely, to the detriment of souls and to the offense of the people. In this situation, when the Bishop requested advice from the Holy See, the Sacred Congregation of the Council replied on January 24th, that the Bishop should "set a deadline for the priests mentioned, and that until they can be judged to be true canons, they should return to their parochial residence, and consult their conscience regarding any canonical revenues received without a legitimate title; and if the deadline

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is not met, he should proceed against those who disobey, according to the law. However, if these priests are to be judged to be true canons, the same Bishop should proceed against them, according to the law, unless within a reasonable time they relinquish one of the benefices." By virtue of this rescript, all the canons of St. Isidore who were also holding parishes promptly relinquished them, with the exception of John Sánchez, the parish priest of the Most Holy Savior in the town of Villa-

[*Latin ed. p. 142*]

142. LEGIONEN. Manam. Here, he vehemently opposed relinquishing either the parish or the canonry; and, having been repeatedly admonished in a paternal manner by the Bishop to choose one or the other, in accordance with the law, his words proved fruitless. Therefore, on April 9, 1880, a formal decree was sent to him, requiring him to comply with the instructions given to him within eight days. However, he then requested that the matter be referred to the tribunals; and the Bishop of LeÃ³n, for the sake of peace, as he himself stated, yielded to this request; and for this purpose, he appointed Doctor Caietan Sentis, a canon, to examine the case. Furthermore, before the judge, the priest Sánchez confessed that he was a parish priest; and that he wished to remain so, until he obtained the canonry of St. Isidore; at that time, he declared, he would gladly send a notification to the parish in the name of the institution. In the meantime, however, he maintained that, as a novice of the Regular Canons of St. Isidore (as he called himself), he could in no way be deprived of his rights. However, after hearing the fiscal prosecutor, the judge, having perceived that the attempt made by Sánchez to evade the strictness of the law was futile, on July 7, 1880, set a ten-day deadline for the priest to return to the parish. Against this interlocutory judgment, Sánchez protested and also attempted to appeal it to the Metropolitan, although unsuccessfully. Because the judge, on July 14 of the same month, denied him both remedies and reaffirmed the previously set ten-day deadline. During this period of ten days, the matter continued to unfold, and since the priest had not returned to his parish, the judge declared him contumacious on July 21; and subsequently, on July 29, he issued a final judgment, by which the priest Sánchez was deprived of the parish and condemned to pay the costs of the litigation. An appeal was immediately filed, and all the proceedings in the court of first instance were transmitted to the Metropolitan; but because the appeal was admitted only with regard to its suspensive effect, the patron to whom the parish of Villamanam belongs immediately presented a priest to that church.

[*Latin ed. p. 143*]

LEGIONEN. 143. It was deemed fitting, which the Ordinary accepted, but, it seems, did not implement. Indeed, after considering the matter, the Metropolitan overturned the judgment of the lower judge, and decreed that

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D. Sánchez should be held to the parochial residence under the penalties established by the Council of Trent, and that he should be deprived of all right to reside and perform his office in the collegiate church of St. Isidore, unless the Bishop grants him permission for the good of the diocese; and he declared the litigation expenses to be at the expense of the office. But Sánchez did not comply with this judgment, but appealed to the Sacred Roman Rota through the Apostolic Nuncio of Spain. This, in the first instance, confirmed the Metropolitan's judgment insofar as it was decided that D. Sánchez should reside in the parish of Villamanam, decreed that he should return to it within six months, and also wished that all the expenses of the three courts should be borne by the office. However, this judgment did not please the aforementioned priest, but rather he wished to refer the matter to another order of the Rota. And here, on January 9, 1882, after invalidating the acts of the other college, it was decreed that the status of the collegiate church of St. Isidore should be maintained as of January 9, until a Bull of Pope Pius IX is sent for execution. However, the judge D. Caietan Sentis was condemned to pay all the expenses of the courts. With this judgment given, the matter seems to have lapsed without appeal. Therefore, when after some time a recourse was made to the same tribunal, either by the priest who had been presented to the parish of Villamanam by the patron, or by the judge of the Legionensis Curiae, who had been fined for the expenses of the four courts, both were rejected by the Rota. Then, the Legionensis Prelate turned to the Holy Father and asked how he could help the parish of Villamanam, which lacks a pastor, and which is counted among the most important parochial parishes of the diocese.

[*Latin ed. p. 144*]

144. LEGATION. A Synopsis of the Matter. (1). It is established in the authoritative texts, *De appell.* and *can. Anteriorum* 2, question 6: "All" appeals can be presented to the judges who are to count them within ten days from the pronouncement of the sentence. Therefore, after these days have passed, and the sentence has passed into the matter adjudged, the appeal can no longer be interposed. "When, after a period of ten days, the sentence has passed into the authority of the matter adjudged, he who does not seek recourse for the purpose of the appeal within that time denies himself the right to appeal, since, by doing so, he appears to have submitted to the judgment of the matter adjudged." See, for consultation, title *De sent.* in matters adjudged. However, in the matter at hand, ten days have passed without any claim from either party. Therefore, the sentence appears to have passed into the matter adjudged; and consequently, according to the aforementioned, it can no longer be appealed. It has also been noted that a matter adjudged is accepted as truth, *Reg.* 207 ff. and *I. Ingenium* ff. regarding the status of liberty; and that it has, for itself, the presumed consent of both parties, cited in the chapter concerning consultation. Furthermore,

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the presumption of law and the fact that it is just, *I. Res iudicata* ff. regarding legal matters; create a right between the parties, see 13 §. Although the title concerning judgments and matters adjudged, chapter 2 of the cited title, concludes disputes; and excludes the presentation of evidence to the contrary, even under the pretext of newly discovered instruments, see 21 §. end of the cited title *De sent.*, and see *c. Monasterium* ibid.; and finally, it is of such value that it can make something into nothing, and falsehood into truth, and black into white, according to the letter of the law, as Julianus states, number 2 ff. of the Code. Therefore, since both jurisdictions protect the matter adjudged with such clauses, those who appeal it should be immediately rejected. And although there are cases in which, through the CONFIRMATION OF THE ROTA'S SENTENCE (1), readers should note that the point of this controversy lies in whether and in what way the Rota's sentence of January 9, 1882, can be sustained.

[*Latin ed. p. 145*]

LEGIONEN. 145: Concerning the alleged grievance, and the restoration made regarding it, according to L. 1 ff. It is inquired whether appeals from a judgment already rendered are permissible; however, this is not done unless for a most serious and evident cause of justice, and unless certain arguments demonstrate that the preceding judgment is manifestly unjust. But in the matter before the Rota, justice seems to prevail, both in that the matter is to remain in the state in which it was decided, until the Holy See provides otherwise, and also in that the judge of the Sentis processes is fined for the expenses incurred. Therefore, an appeal from a judgment already rendered is not to be admitted. And that the preservation of the status quo is just, can be demonstrated by these observations. Sánchez, through the nomination of the Royal Patron, has acquired a certain right to the Canonicate, a right to the thing itself, according to canon 32, question 7; canon 16, chapter 1; signifying IS; chapter 24; and chapter 29 of Pastoralis, concerning the right of the Patron, L. 3 D. For indeed, there is no reason to doubt the suitability of this priest. However, he cannot be established in this benefice; and this not through his own fault, but through the malice of times or circumstances. Indeed, one should not impute blame to him who does not fulfill his duty, if he has not done what was required of him, as stated in reg. 41 of the Jurisdictions in VI. That is to say, he should suffer neither damage nor penalty, who, being legitimately hindered, does not perform what he otherwise should have done, as stated by Reifenstuel in the cited regulations; for no one should be punished, or deprived of his right, or suffer damage, without fault, argument c, from "De reg. iur. in VI." These principles of equity are demonstrated by numerous examples in canon law. Thus, for example, if a cleric is not promoted to a parochial church, he is obligated to receive the priestly order within a year, under penalty of losing the parochial benefice, according to c. 35 of De elect. in VI;

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and yet he is exempt from this penalty if he sufficiently proves that he was legitimately hindered – there – "But this year does not run if, through a just impediment, you were detained within this time." Similarly, if someone appeals from a judgment, he is obligated to pursue the appeal within a year, according to c. Cum sit 5 of De appellat.: and the acta, Tom. XVII, fasc. CXOV, 10.

[*Latin ed. p. 146*]

146. LEGATIONES. Appellatio non reputatur deserta, si impedimentum ad eam exercendam intra unum annum fuerit interjectum: "Dummodo prosecutionem ipsius (appellationis) per impotentiam vos constiterit omississe." Ita c. 11, ratio 8, De appellat. Sic, quamvis electio canonici debeat intra tres menses c. 1, ne pro defectu 41, De eieci.; tamen etiam post tres eligere adhuc possunt canonici, si impedimentum intra tres menses eligendi sufficienter proberint – ibi – "Intra quos scilicet tres menses, (iusto impedimento cessante) si electio celebrata non fuerit, qui eligere debuerant, eligendi potestate careant ea vice." Exemplum simile habetur in canonicis infirmis, qui non praestantes officium, tamen, utpote legitime impediti, percipiunt fructus. Itaque etiam in praesenti casu, sacerdos Sánchez, qui ex vi maiori impeditur ab institutione consequenda, debet in suo iure integer praesentari; nec ullo pacto damnificari. Culpa enim ei verti non potest, seu imputari, quod per eum non stat: quia legitime impeditus poenam sentire non debet. Atqui si, stante hac impossibilitate institutionis consequendae, sacerdos Sánchez adigeretur vel eligere ius ad canonicatum, dimittendo paroeciam; vel eligere paroeciam dimittendo ius ad canonicatum, iam neque in suo iure idem integer praeservaretur, et reapse damnificaretur. Sane in prima hypothesi, ipse exueretur titulo certo beneficii, quin cognosci valeret utrum et quando posset novo titulo cohonestari; in altera vero, privaretur iure ad canonicatum, videlicet spe et certa possibilitate consequendi beneficium pinguius et commodius, quam parochiale. Itaque stante dicta impossibilitate, et usque dum S. Sedes aliquid super hoc provideat, ad neutrum istorum sacerdos Sánchez cogi debet; quia in utroque casu poena absque culpa pariter ei inureretur, idque contra iuris normas superius allatas. Ideoque servandus erit status quo, iuxta Rotae sententiam. Eo vel magis, quod ex hac praesentis status conservatione, dum salva tecta servantur iura sacerdotis Sánchez.

[*Latin ed. p. 147*]

LEGIONEN. 147, neither does the parish appear to be properly harmed. For it is governed by a Vicar, who is freely appointed by the Bishop, and who collects the entire income of the benefice, as is asserted in the often-cited Rotale. Furthermore, it is neither unusual nor new in law for parishes to be governed by Vicars. And this is precisely verified in the case of a priest passing over to a Religious Order, from chapter 4, "De Beneficio,"

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of the Regulars, in VI. - there - "The benefice of him who enters the religious order shall not be granted to anyone within the probationary year; but meanwhile, the same benefice must be served by another, to whom a suitable portion of its revenues shall be assigned." Therefore, it can also be permitted in this case, especially since Sánchez maintains that he is a Novice of the Regular Canons of St. Isidore, and therefore should enjoy the privileges of the Religious. If recourse is made to the Sacred Congregation of the Council to challenge the value and the status of the Rotale's judgment, it can be answered first that this was obtained surreptitiously and deceitfully, according to what has been alleged in the specific case. But further, it could be said that the rights of a third party are harmed by this rescript. For the right sought by the priest Sánchez is to the canonry. And this right is taken away from him, because, although he is not a canon by reason of a lack of institution, he should return to the parish as soon as possible; and thus he should also send notice of his intention to resign the canonry. Moreover, the Patron has a certain right to nominate any cleric, even a parish priest, to the canonry of St. Isidore. Indeed, this right would be restricted or harmed by the decree of the Sacred Congregation, to the extent that the Patron would nominate to such benefices those who hold a parish: because the Ordinary could order them to return to their parishes. Furthermore, from Reg. XVIII Cariceli. Ap., it is decreed and declared "that henceforth, by any signature or concession or grace, or by Apostolic Letters for commissions or mandates or declarations of this kind, even if issued spontaneously and with full knowledge, and even before a dispute has been raised by the Holy See itself,"

[*Latin ed. p. 148*]

d 48 LEGIONEN. > Or, concerning matters to be carried out either by his authority or by his order, no right whatsoever can be claimed against this, in any way. > Thus, the Holy See itself must not undertake any action that would prejudice the right of a third party, unless it explicitly states otherwise. As stated in S De Rescriptis in VI. And Apostolic Letters do not invalidate the right of another, < even if that right is indirect and > minimal, as Riganti states in reg. 18, n. 7, citing others: for the rule uses the term "in any way," which includes all rights, however small, as Fagnanus observes in c. Ceterum, n. 21 De rescript. Moreover, even the right to a thing, which arises from election, presentation, and opposition, is protected by this rule, as Riganti states in I. c., n. 47, and Lotter in De re benefic., lib. 2, q. 51, n. 28, among others. This, however, perfectly suits the case of the priest Sánchez, as is easily seen. And although these statements are specifically about actions properly undertaken by the Holy See; they also apply to the rescripts of the Holy Congregations; indeed, even more so; for these must always protect the rights acquired by third parties, and must not undertake any action that would prejudice those rights. With this rule adopted, if

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the present decree of the Sacred Congregation seems to violate the rights acquired by a third party, then it must be considered to have no effect, and it can even be declared invalid. Nor can it be argued that the Tribunal of the Rota could not intervene, nor speak, and much less invalidate the decree of the Sacred Congregation, because an inferior judge cannot condemn the acts of a superior. For it could be answered, this is most certainly true when the acts of the superior are valid in themselves; but not when they are vitiated by an internal defect and are therefore null and void. And there is not a single example in canonical jurisprudence to support this exception. Thus, for example, against Confirmations of the Holy Father concerning any matter, statute, contract, or the like, no inferior judge can in any way judge, as stated in cap. 1 and 2 De confirmationibus util. vel iniit. And yet, it is possible to proceed against them when it is clear from the facts, or the like, that they were obtained through false suggestions. As was the case on 24...

[*Latin ed. p. 149*]

LEGIONEN. 149 Regarding the meaning of the word ”sign”; and c. Regarding appeals. 2 Regarding confirmation of utility, etc. and c. Regarding letters 20 Regarding rescripts. These matters relate to the expenses of litigation, by which the judge of first instance, Sentis, was burdened. Although the decision of the Rota seems harsh in this regard, it must be remembered that this decision also became final; and therefore, it cannot be so easily overturned. Furthermore, it must be observed that D. Sentis did not follow the proper legal procedures, whether he considered the priest Sánchez as the holder of two benefices, or whether he considered him as a non-resident parish priest. Indeed, in the first hypothesis, it is established in c. 28 De praeb. et dignit. and in cap. 4 sess. 27 C. F., that whoever obtains a residential benefice, while possessing another of the same kind, remains by law deprived of the latter. However, this rule is valid only when the other benefice has been conferred, accepted, and peacefully possessed, or at least when it has not been peacefully possessed, as the Doctors commonly state after the Gloss in cap. 35 De elect. in VI, v. ”Pacifica tenent DD.” But this extreme point in the matter is not verified, and therefore, it cannot be invoked to justify the decision by which the priest Sánchez was deprived of the parish. The second hypothesis remains, namely that Sánchez was considered as a non-resident parish priest, and therefore he should be warned, and if he does not reform, he should also be deprived of the benefice. And it is clear that the judge of LeÃ³n proceeded in this sense, as appears from the context of the decision. However, even in this case, he proceeded contrary to the rules of law. It is indeed established that an absent parish priest must be summoned by one or three warnings, personally or by public edicts, according to the circumstances, so that he may return to the Church within a reasonable time. But according to cap.

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Fx parte De cleric. non resia, six months must always be awaited after the last edict, after which time, and only then, can the deprivation be lawfully carried out; Lucidi, cap. III §. o, n. 2 3 5 and others with him. This form is strictly observed.

[*Latin ed. p. 150*]

150. LEGION. It must be maintained "otherwise (the judge) proceeds in no way and unjustly." *Lucidi ibidem*. However, this rule was entirely violated in the judgment of Legion, and therefore, in both hypotheses, it seems that D. Sentis could not present any excuse. Once this is established, it does not seem incongruous that he was penalized by the expenses of the judgment. For the judge who rendered an unjust sentence is bound by the law (L. 63 ff. *De evict.*, and L. 32 ff. *De iniur.*) to compensate for the damages. Nor can he be excused by ignorance of the law, because this benefits no one (reg. 13 *iur. in VI*), and it is most unbecoming of a judge. Indeed, lacking the proper knowledge, and judging wrongly through culpable ignorance, he commits a mortal sin, and is bound to make restitution of the entire damage caused to the injured party, whether in the substance of the matter in dispute or in the superfluous expenses, as testified by Cardinal De Luca, *t. 2, disp. 37, n. 1*. And since the expenses of subsequent judgments could also be included among the damages, it is possible that the judge of Legion could also have been justly penalized for these.

THE SENTENCE OF THE ROTA SEEMS TO BE REPREHENSIBLE. First of all, it cannot be safely said that the sentence passed into a final judgment, merely because ten days have elapsed since its promulgation, if the parties have not, in the meantime, appealed; moreover, it is required that the sentence be just in itself, and not issued contrary to established law. Indeed, L. *Si expressim* states: "If a sentence has been given expressly contrary to the rigor of the law, it must not be valid; and therefore, even without an appeal, the cause can be reopened." And in L. *Si cum inter te C.*, when it is ordered to appeal, a sentence contrary to the laws or canons, has no force; so that even assistance for the appeal is not necessary. And again, c. *inter ceteras 9 De sent. et re iudic.*, it is established: "A sentence must not be upheld if it contains a manifest injustice." And this is extended to a sentence in which the judge expresses a reason that does not conclude the matter, because even such a sentence is null; Abbot, c. *Sicut nobis*, *tit. cit., n. 14 and 15*. From these and other passages, the Doctors conclude that the sentence...

[*Latin ed. p. 151*]

LEGIONEN. 15*1. An unjust or null judgment never passes to the matter judged, even if it is not appealed; but if a legal error is proven, it can be retracted not only after a decade, but also after a decade, up to 50 years. Thus, Maranta, title *de sententia et re iudicata*, n. 154; Reiffenstuel, ibid., n.

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114 and following. For that which is null, produces no effect, and there are no qualities in non-being; and that which is done contrary to the law must, according to the established rules of law, be considered void. However, all of these things can be argued against the judgment of the Rota. Indeed, it is held that a parish priest can, for an indefinite period of enough time, abandon his parish for the sole reason of being able to enjoy a more substantial salary, or, if he wishes, in order not to be forced to relinquish a right pertaining to something more pleasing to him. But this is entirely abnormal and easily understood by everyone to exceed the power of any judge. The Tridentina canon, chapter 23, session 2, which applies to bishops as well as parish priests, clearly proclaims: "Since it is commanded by divine law to all to whom the care of souls has been entrusted, to acknowledge their flock, and to offer sacrifice for them, and to feed them with the word of divine instruction, and by the administration of the sacraments, and by the example of all good works, and to take care of the poor and other miserable persons, and to undertake all other pastoral duties, all of which cannot be accomplished by those who do not watch over their flock, nor assist them, but abandon them in the manner of mercenaries; therefore, the synod admonishes and exhorts them to remember the divine precepts and the form of the flock, and to govern and guide them in justice and truth." And then it adds: "But if anyone (may it never happen) should be absent contrary to the provisions of this decree, the synod decrees that, in addition to the other penalties imposed and innovated against non-residents under Paul III, and the guilt of mortal sin which he incurs, he shall not enjoy the fruits of his office in proportion to the time of his absence." And specifically for parish priests, it adds: "If, after being summoned by edict, they are contumacious, even if not personally present, they can and should be punished up to the extent of their parish."

[*Latin ed. p. 152*]

1S2 LEGIONEN. "Concerning the deprivation [of office]; and that 'permission to leave' should be granted freely and in writing for more than two months, unless [there is] a serious reason." After such legal prescriptions, each individual will conclude what should be thought about the judgment of the Rota. Nor does the amplified cause of not losing the right to a canonry, or of receiving greater revenues, seem to help Sánchez, because the same Council of Trent repeats, citing the same passage, "Nor should execution [of penalties against absentees] be carried out by any privilege, license, familiarity, exemption, or by reason of any benefit, agreement, statute, oath, or any authority confirmed, even by an ancient custom, which rather, it should be said, is a corruption, or by an appeal or inhibition even in the Roman Curia, or by the force of the Edict of Eugenius." Therefore, even in the most difficult case, when the wicked people hate their pastor, who therefore is forced to flee, in this case, I say, in which

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the parishioners would offer everything to have mercy on the innocent pastor; nevertheless, according to Fagnano, chapter on Clerics, concerning the non-resignation of clerics, number 27, "where enmities are likely to be long-lasting," for the sake of the care of souls, the pastor should be urged to resign or to seek a change [of position]; and thus the pastor leaves without guilt, but not without a reason. And, appealing to the custom of the Sacred Congregation of the Council, number 57, he adds: "If, within six months, the enmities have not yet been appeased, (the Sacred Congregation) writes to the Bishop, so that he may grant him a six-month extension, repeating all that was contained in the previous letters, and without hope of any further extension, which is rarely granted." And if, sometimes, this rigor is tempered, and an indulgence of absence is extended from year to year, according to what is handed down in Lucidi, chapter III, § 6, page 233; it must be remembered that this discipline, with regard to absent pastors, has been observed in this single case, scarcely as a punishment for a turbulent people, always under the most serious circumstances, and by the force of that..."

[*Latin ed. p. 153*]

LEGIONEN. 153, concerning the supreme authority with which the Most Holy Roman Congregations exercise judgment: for, "perpetual dispensations concerning non-residence have already been revoked for just and reasonable causes," as decreed in chapter 2, session 6 of the Council of Trent. Thus testifies Fagnano, cited above, I. But the present case differs entirely; for in this instance, the absence would occur solely for the benefit of the parish priest, so that he might obtain a more lucrative emolument or not lose his right to the benefice, and this for an indefinite period, with the faithful constantly complaining about their pastor (as the Bishop testifies), and with considerable detriment to souls. And in these extreme circumstances, to approve the pastor's absence would seem both unjust and entirely contrary to canonical law and ecclesiastical discipline. Therefore, the opinion of the Rota, which upholds such an absence, is one that is null and of no value. Consequently, it cannot be considered to have passed into a final judgment, nor can it, in any way, be upheld by the Sacred Congregation [of the Council]. Indeed, it should be upheld in every way, the decree of January 24, 1880, of the Sacred Congregation [of the Council], the equity and reasonableness of which are evident to all. It is of no avail to say that this was obtained surreptitiously. For, first, it does not appear that the Sacred Congregation [of the Council] was unaware of what the Rota's opinion affirmed, since those things which were affirmed by the Rota were not concealed by the Bishop in his supplication. Indeed, even if those circumstances had not been narrated, as the Rota supposes, it would not necessarily invalidate the rescript. For, if the silence concerned a matter that was not essential, and the final cause

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of the rescript, "which moves the mind of the one who decides completely and profoundly," according to the Abbot in *De Renuntiat*, chapter 18, was properly presented, as is easily seen. For, in this case, the matter was nothing other than the provision for the parish; that is, so that the parish would not be deprived of its pastor for so long. Therefore, the rescript should have been upheld; for a deception that occurs concerning the cause does not invalidate the rescript, as Reiffenstuel teaches in *De rescriptis*, number 182, according to common doctrine. It may also be inferred that such a rescript of the Sacred Congregation [of the Council] is harmful to the right of third parties. Not first, the royal patron's right. For, in this case, anyone can be named.

[*Latin ed. p. 154*]

184. LEGION. Also, a parish priest, provided that he wishes to relinquish his parish; which condition, however, is understood in every case; indeed, it is even desired by the King of Spain. Thus, it is ordered by the Royal Decree of November 14, 1851, article 5. Therefore, the burden of that decree does not fall upon the regional patron. But neither is the right of the designated one violated, who, indeed, may apply for the benefice, and, by applying, has the right to be instituted by the Bishop if he is deemed suitable. However, in no way does the right to perpetually retain the parish belong to one who is absent, under the pretext that he has not been instituted, since a canonical institution is impossible, and, furthermore, he has actually acquired possession of it, and enjoys the full benefits and revenues of the benefice. If this reason were sufficient, no pretext whatsoever would be valid for abandoning the parish while still possessing it. It would seem that everyone could absent themselves in order to profit, and yet retain possession. But rather, the right of the parish is certainly to have its own pastor at some point. Finally, to allege a novitiate, as Sánchez does, in order to defend himself in his absence and retain the parish, seems to be nothing more than engaging in deceptive trickery, rather than reasoning. Regarding the expenses of the lawsuit, it has been noted that if the Lord Sentis is to be condemned for his unjust judgment; now, and considering what has been observed so far regarding the opinion of R o tae, one could argue against this. And again, because after the decree of S. O. O. of January 24, 1880, Sánchez appears to have recklessly provoked a lawsuit, it would seem that the expenses of the lawsuit should be imposed upon him, as one who litigated recklessly. Indeed, the following is prescribed from the text of Instit. De poena temere litig. §: "But a litigator who is not upright shall be compelled to bear the damages and the expenses of the lawsuit to his adversary." And more on this matter, see Card. De Luca 39 de iudic. n. 7. But finally, regarding the judge Sentis, although he may have, prematurely, deprived the priest Sánchez of the parish, he did not do so without cause, or without being influenced by a reckless opinion. He rendered his judgment

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based on the observations of the Fiscal, among other things.

[*Latin ed. p. 155*]

LEGION. 15 5. And indeed, from the interpretation of many, but not all, Doctors, and especially from the practice of the Sacred Congregation, it has been concluded that, even after the Council of Trent, the prescription of Chapter [unspecified] remains in force, namely, that, after a final warning has been given, six months are allowed before the sentence of deprivation is pronounced. If, however, the judge of LeÃ³n should hold a different opinion, and should do so relying on the authority of certain other Doctors, he seems to have the best excuse for so doing. The author Reiffenstuel, in *De sent. et re iudic.*, number 180, states that the litigant is not to be condemned if he yields, provided that, before entering into the dispute, he had consulted with Doctors. Furthermore, injustice would fall upon the accidental aspects of the judgment, not upon the substance. For Sánchez had not returned to the parish after six months, but had requested the canonry. Finally, the advocate concluded, quoting the words read in Alatri on March 14, 1842, before De Retz at the Holy Roman Court: "For if the accuser himself does not clearly prove that it is a pure and malicious calumny, he will never be able to assert the right to an action for damages arising from the investigation." And if he has always maintained the most steadfast conduct and has acted for the common good, it is all the more necessary that he be held accountable to the Court and to the Fiscal Ministry; since the Fiscal Ministry cannot be condemned, unless it be for manifest calumny and evident impropriety. If the judge Seretis cannot be penalized with the expenses of his own judgment, much less can he be penalized with subsequent expenses. With these things presupposed, the purpose was to examine the following question: Whether and how the sentence of the Spanish Rota of January 9, 1882, should be confirmed, or rather, infirm.

RESOLUTION. The Sacred Congregation, having considered the matter, on May 10, 1884, decided to respond: Negatively to the first part, and affirmatively to the second part; and to confirm the sentence of the Court of LeÃ³n, with the expenses of all degrees being paid by the priest Sánchez.

[*Latin ed. p. 156*]

156. LEGATIONS. From which are gathered: I. The opinion explicitly expressed against the strictness of the law, and that the laws and canons promulgated have no force, nor can they in any way affect a matter already judged; so that even after ten days, a proven error of the law can be retracted. II. For that which is done contrary to the law produces no effect, and ought to be considered as if it had not been done. III. The duty of the parish priests, concerning the souls entrusted to them, which proceeds from divine precept, cannot be properly fulfilled unless it is assisted by him who watches over his flock, and who never abandons it; for they

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are admonished by the Council of Trent, and the pastors of souls are exhorted, to remember the divine precepts, and to feed and govern the flock in truth and justice. IV. Furthermore, penalties are established against non-residents, with graduated severity, beginning with the deprivation of income in proportion to the time of absence, up to the deprivation of the parish. V. The strictness of this precept has not been moderated in practice by the Apostolic See, nor concerning the pastor, whom the wicked people hate; for while the power of supreme authority is always exercised, and for very serious reasons, the permission to be absent is renewed from year to year, perpetual permission for absence is never granted. VI. The parish priest is neither hated by the wicked people in the parish, nor are the most serious circumstances that compel him to be absent from the parish for an indefinite time, and therefore, the parish was rightfully taken away from him by the Bishop, since he neither wished to leave, nor to return to it, seemingly drawn by the love of a more lucrative income. VII. Hence, it is easily understood that the sentence of the Rota, which declares something null, does not affect a matter already judged, and that, contrary to the Council of Trent, the parish priest can be absent from the parish for an indefinite time, while retaining both benefices, each of which requires residence.

[*Latin ed. p. 157*]

1S7 DB TULANCINGO CONCERNING THE FACULTY OF SAYING TWO MASSES. On May 10, 1884. By summary petition. SUMMARY OF THE CASE. The Bishop of Tulancingo in the Republic of Mexico, on January 13, 1883, presented a petition to the Most Holy [Pope], humbly explaining that there is a lack of priests in the City of Tulancingo; so that it often happens that there is no priest to celebrate the Mass, to which a large part of the people comes, as happened in the last Mass on Sundays and other days. Since impiety has pervaded that nation for many years, he considered it very important "that the sacrifice of the Mass should never be lacking on feast days, to which numerous faithful come; since for many, this attendance is almost the only public act of religion." For these reasons, he requested that two priests be designated who would have the faculty of saying two Masses. SYNOPTIC DISCUSSION: THE GRACE SEEMS TO BE DENIED. It was observed, by official decree, that although in the primitive Church, more divine sacrifices were celebrated by one priest on the same day, nevertheless, the discipline of the Church has been changed afterwards, and Councils and Supreme Pontiffs have issued laws, by which it was established that priests can offer the Sacrifice of the Mass only once on the same day. Thus, Innocent III, when asked by the Bishop of "Wigornia": "Whether a priest can celebrate two Masses on the same day," gave the response: "Except on the feast of the Nativity of the Lord, unless 'a cause of necessity suggests,' it is sufficient for the priest to celebrate only one Mass in a day." Honorius III also established

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the same thing in chapter "Te referente §. 2" concerning the celebration of Masses. But, according to the common opinion of theologians, a cause of necessity must be true and grave, as is also demonstrated by the responses of the Sacred Congregation, denying the grace of saying two Masses, as can be seen in Derthusen, August 20, 1768, in Apten, May 8, 1734, Nicien, November 27, 1790, and in our [records].

[*Latin ed. p. 158*]

458 FROM TULANCINGO, regarding matters in Arboreti. August 23, 1879. AVIGNON. April 22, 1882, etc. (1) And if, at times, the Church has granted the faculty of repeating the Mass, this has been in the case where a single priest governs two parishes, and therefore, so that one parish, due to the length of the journey from the other, would not lack the benefit of hearing Mass, the faculty of repeating the Mass was granted to that parish priest. But in our case, it seems that this necessity is lacking, because the Bishop requests the faculty of repeating the Mass for two priests designated by himself; because it often happens that there is no priest to celebrate the Mass to which a large part of the people comes, as happens in the last Mass on Sundays and other days. From these words, it is apparent that the Bishop is complaining about the lack of Mass at the late hour, a deficiency which can be remedied either by urging the faithful to attend Mass at the third or first hour, or by obliging some parish priest or priest to celebrate at the late hour. Therefore, since a serious necessity for repeating the Mass does not appear, because it is a matter of mere convenience, it seems that the grace should be denied. THE GRACE SEEMS TO BE TO BE GRANTED. However, contrary to what has been stated, it was deemed necessary to note that the law, which prohibits a priest from repeating Mass on the same day, is, when it is an ecclesiastical law, often dispensed by the Church, like a benevolent mother, if necessity demands it; and especially if the causes are removed that gave occasion to the prohibiting law. And these causes have sometimes been either the avarice of priests, who celebrated two or more Masses and thus received more alms, or rather, because with an increased number of priests, the necessity of repeating Mass for the convenience of the people was lacking. And with these causes removed, the Holy See granted the faculty of repeating Mass, as in Pacen. December 16, 1876, in Lingonen and Turonen. August 24, 1878, in Mexicana, December 20, 1879, in Vallisoletana, and April 7, 1883. In this case, a true and serious necessity appears from the very words of the petition in the Bishop's letter; from which it is apparent that if the grace is not granted, a large number of people on feast days...

[*Latin ed. p. 159*]

FROM TULANCINGO: 159 requests the benefit of hearing Mass; which should be avoided, especially in the present circumstances: for, as the

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Bishop says, this attendance at the Sacrifice of the Mass is for many faithful almost the only public act of religion. But since this external and public act is necessary for fostering faith and for providing an example of good works to others, it becomes clear that, without this concession, one must fear damage to that very faith. Indeed, as was reported "in Mexicana on December 20, 1879, by the Archbishop of Mexico in his exposition on the state of the Church: "...the absence of the hearing of Mass, it is easily possible for (the people of) Mexico to practice idolatrous acts, which are still not entirely free from the stain of superstition." (1) Furthermore, it is the Bishop himself who requests the concession, and he would never have sought an exception for his diocese from the general ecclesiastical law, unless a grave necessity were present. The very form of the request demonstrates this necessity, because the Bishop seeks the concession not for Titus or Gaius, a priest, but so that he may be granted the power to designate two priests who may say Mass on the same day, in order to compensate for the lack of priests in those circumstances in which necessity arises. This necessity is evident in the Mexican Republic, as appears also in the aforementioned report of the Archbishop of Mexico, from his words: "Moreover, there is such a shortage of priests that, even in this very archiepiscopal city, neither those who are in prisons, hospitals... lack the benefit of Mass on feast days, and the relator had to permit [it]." Therefore, it seems that the concession should be granted in this case, as it was granted in Mexico on December 20, 1879. With the foregoing premises, the question was raised as to what should be answered to the Bishop who made the request. RESOLUTION: The Sacred Congregation, after considering the matter on May 10, 1884, decided to respond: Provided that necessity, and not convenience, demands it, for a period of ten years, with the understanding communicated to the Most Holy [Father].

(1) Recueil, Vol. XIII, page 340.

[*Latin ed. p. 160*]

160 PAVIÆ. REGULARITAS. Die 10 Maii 1884. Per petitiones summarias. Haec causa proposita est inter petitiones summarias die 2 Iunii anni 1883, et responsum sequens ab S. C. C. datum est: "Dilatatum ad annum, et post annum Clericus recurrat, commendatus ab Episcopo, et cum testimonio medici curantis." (1) Verum cum praefatus Clericus, cum iam 24 annos aetatis suae impleverit, sit ita ut etiam cursum theologicum conficiat, quamvis nondum transitum sit tempus a S. C. C. praefinitum, pro nova obtinenda audientia, nihilominus confidenter denuo recursum habuit, ad SSm. Sedem, ut ab hoc dubitationis statu liberatus, possit ad SSm. Subdiaconatus Ordinem quam cito promoveri. Has preces vehementer commendavit Episcopus Paviensis, dicens: a mense Iunio 1883 Clericum oratorem semel tantum affectum fuisse a comitiali morbo; clarum Medicum fidem facere, morbi indolem mitem esse, et sanabilem per iuges curas, quibus sed-

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ulo clericus incumbit et incumbet: Dioecesim omnino Sacerdotibus egere, qui paroecias desertas adeant pro bono spirituali animarum. Medicus vero deposuit: se commoditatem habuisse certiorem fieri de modo quo morbi accessus exorditur, progreditur, et attenuatur; et pro certo habere convulsiones dici posse epilettiformi eo quod magnam praeferant morbo comitiali similitudinem. Qua de re, ait Medicus, si clericus optatum finem pertingere velit, iugibus remediis, ab arte medica praemonstratis, usurum etiam ad vitam, adpromittere oportet. Cum vero ex noviter deductis quaestio faciem non mutaverit, et aliunde principia iuris, quae ad rem facere videntur, iam sufficienter in praeterito folio exposita fuerint; quaesitum fuit quomodo preces oratoris essent dimittendae. RESOLUTIO. Sacra Congregatio Concilii, re ponderata, sub die 10 Maii 1884 censuit respondere: Pro gratia, ad cautelam, onerata conscientia oratoris non intermittendi susceptam morbi curationem, facto verbo cum SSm.

COMPENDIUM FACTI. (1) Relata fuit Vol. XVI, pag. 95.

[*Latin ed. p. 161*]

To His Eminence, Cardinal Ludovicus Iacobinus, Secretary of State. Concerning the establishment of a hospital for those suffering from the cholera.

Most Eminent Cardinal,

The terrible scourge of the Asiatic disease, which first appeared in the neighboring nation of France, as was already feared, has also struck many parts of both Northern and Southern Italy. And while it has spread almost everywhere, and still creeps slowly, in the populous city of Neapoli, it sows devastation and ruin.

Until this day, Divine Providence has covered the city of Roma with a special protection, shielding it from this scourge. For this mercy, We, with sentiments of a profoundly grateful and devoted heart, have rendered and continually render the most humble thanks to Divine Goodness; and with all the fervor of Our spirit, We raise daily to the Father of Mercies the voice and the hands of supplication, that, through the powerful intercession of the Most Holy Virgin and Our glorious Patrons, He may turn away this scourge from Our Roma and save her.

But alas! Because of the many iniquities that provoke Divine Justice to anger, and also because of the proximity of the places afflicted by the disease, We are not without fear for this Our City, which We love with special affection.

[*Latin ed. p. 162*]

162. LETTERS. It is possible for us to remain indifferent, fearing [the consequences]. Therefore, we send these letters to you, Cardinal, who are facing this danger. We turn to you, Lord Cardinal, with this letter, to make known to you our intentions and plans concerning this matter, and we entrust to you the care of ensuring that what we have decided is carried

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out. We know that those who administer public affairs have already taken commendable and prudent measures, with laudable diligence and wise counsel, to prevent the feared disease from invading the city. However, we also desire to be prepared to assist our beloved people of Rome, and we have decided to open a large infirmary in the vicinity of the Vatican, where it will be easy for us to access and visit the sick. We intend to provide all necessary resources and to provide for all expenses. This infirmary, located near us, namely in Borgo and Trastevere, will be open, and we wish its administration to be entrusted to our Major Domus, and the direction to be given to two distinguished experts in the art of healing, who assist us, namely Professor Alexander Ceccarelli and Doctor Ruggero Valentini. These two, conforming to the rules already suitably established, will be able to associate with others, if indeed it should be necessary, in the care of those suffering from the cholera.

[*Latin ed. p. 163*]

For this very purpose, although the present circumstances are difficult, and we ourselves are in straits, yet trusting in Divine Providence and in the generous virtue of the Catholic world, we have already allocated the sum of one million Italian silver coins. It will be your care, Most Eminent Cardinal, to ensure that, with the greatest possible diligence and in the most useful and pleasing manner, this Our will, inspired by that Christian charity which, following the example of the Divine Master, extends even to the giving of one's life for one's brothers, may be brought to fruition.

And should it happen, may God avert it, that this scourge should spread and worsen, We reserve to ourselves the right to dispose, even from Our Lateran Palace, in whatever measure may be deemed appropriate, opportune, and possible.

Receive, meanwhile, as a pledge of the most sincere affection that we have for you, Our Apostolic Benediction.

From the Vatican, 10th of September, 1884.

LEO XIII.

Given in the Buildings of the Vatican, 4th of September, in the year of Our Lord 1884.

LEO PAPA XIII.

[*Latin ed. p. 164*]

164 NOTIFICATION from His Eminence Cardinal Lucidi Maria, Parish Priest, and General Vicar of His Holiness Pope Leo XIII, concerning a Congregation which calls itself from St. Paul. From the very beginning of his glorious Pontificate, the Holiness of Our Lord Pope Leo XIII, directing,

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through the Cardinal Vicar, his word to his children, warned them against the proselytism of heresy. He praised their constancy in rejecting the allurements of seduction, which were spread even there, where the tender years, the insufficiency of education, and the grave miseries would have, at least for the sake of civil decency, prohibited those arts which, in any circumstance, condemn Religion; the Holy Father, to avert such danger from his Rome, resorted to the wise rigor of censures. More than two months have now passed since the sixth year, and the evil, without hindering the undeniable increase of good, has nevertheless spread. To extinguish the Catholic education of our people, and to revive cults that were almost dead in the homeland, sects of every kind descended from foreign regions, occupying the soil soaked with the blood of the martyrs; and where Our Lord Jesus Christ, having visibly prepared the Seat of the Prince of the Apostles, had founded the center of unity, men fighting among themselves, raised the banner of discord. Nevertheless,

[*Latin ed. p. 165*]

Even if there were nothing else, the loss of even a single soul, and in such numerous and varied needs, the lavish expenditure of gold to promote heresy, presents a sad spectacle; it would suffice to recall the aforementioned Instruction of my venerable Predecessor. But today, new evils threaten this City: a so-called Congregation of St. Paul, established in the street named after Genoa, arrogating to itself the title of "Catholic" and abusing the appellation of "Italian," attempts to draw the Romans into schism and heresy. And although, as with so many others of this kind, this assault on our faith is destined to fail, there are nevertheless very special reasons here to raise one's voice and denounce this new sect. It boasts of being Catholic and Italian, while in reality it is heretical and foreign. It preserves some semblance of the Catholic religion, in order to deceive the uninitiated. They are apostates; but nevertheless, those who, in this reprobate assembly, every Sunday parody the divine mysteries, retain the sacerdotal character, having deemed it fitting to preserve, as far as the substance is concerned, certain rites and ceremonies. Hence, although they consider it permissible to abolish the language proper to the Church, the language, I say, which binds believers from the Amazon to the Tagus...

[*Latin ed. p. 166*]

166. The land of fire, Iceland, the language of the Councils and the Fathers, the language of the two civilizing powers of the world, which was deemed worthy to follow the Hebrew and Greek on the title of the Cross, and this treasure of a language they exchange for a jargon unrecognizable to Cavalca, nor to Alighieri; therefore, although they have attempted to introduce variations in the rite, which are altogether unlawful without the consent of the supreme authority governing the liturgy throughout the

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universe; to the eyes of the simple, this array of novelties may seem innocent, and almost one of the many liturgical forms by which the Church is adorned. But this is evil, and indeed very grave, involving a tremendous violation of the ecclesiastical discipline concerning the law of prayer, which, according to the famous formula of St. Celestine, establishes the law of belief: "Let the law of belief be established by the prayer" (Ep. XXI). But there is worse. They overturn the laws divinely established to prevent anyone from usurping offices in the Church, where all things are ordered, without a mission. "How shall they preach," the Apostle asks, "unless they are sent?" (Rom. X, 15). Now, while the Only-Begotten of God repeatedly protests that the doctrine preached by Him is not His own, but that of the Father – "The word you have heard is not mine, but of him who sent me, the Father" (John XIII, 14) – they sever the bond of unity of all Catholic faithful, from the Amazon River to Tagum, from the land that has a name from fire, to Thule: the language of the Councils and the Fathers; the language of the two Powers, Roman and Christian, which united the world with civil virtues (that is, both civil and religious); and finally, the language which was deemed worthy to follow the Hebrew and Greek on the Title of the Cross; and this language of such great value they exchange for a certain obscure manner of speaking, which neither Cavalca nor Alighieri would recognize: and although they have attempted to introduce variations in the ecclesiastical rite, which indeed is a forbidden act without the consent of the supreme governor of the Sacred Liturgy throughout the land; yet to the eyes of unlearned men, this array of novelties may seem innocent, and almost one of the many liturgical forms by which the Church is adorned. But this is evil, and indeed very grave, because it vehemently wounds the ecclesiastical discipline concerning the law of prayer; which, according to the celebrated saying of St. Celestine, establishes the law of belief: "Let the law of belief be established by the prayer" (Ep. XXI). But furthermore, they subvert the laws divinely established, so that no one in the Church, where all things are ordered, may usurp offices to themselves without a mission. "How shall they preach," the Apostle asks, "unless they are sent?" (Rom. X, 15). Therefore, while the Only-Begotten of God so often protests that the doctrine preached by Him is not His own, but that of the Father.

[*Latin ed. p. 167*]

NOTIFICATION 24: While it is written concerning the Divine Paraclete that He would be sent by the Father and the Son for the work of sanctifying souls: "But the Paraclete, the Holy Ghost, whom the Father will send in my name, he will teach you all things and bring all things to your mind, whatsoever I shall have said to you" (John 14:26); will these self-proclaimed apostles presume to speak in the name of God, without being authoritatively sent? Not unlike the prophets condemned in Jeremiah, who, without order, took the initiative, lacking divine inspiration, and prophe-

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sied (Jeremiah 23:21). They continue the line of those heretics whom St. Cyprian depicts as leading a crowd of people without being asked, people who allow themselves to be led astray by carelessness (Lib. de Unit. Eccl.). Now, no one arrogates the honor to himself, except he who is called by God, just as Aaron (Hebrews 5:1). The Levite awaits the Bishop, and the Bishop, in turn, glories in being subject to the Roman Pontiff, to whom, in the person of Peter, Our Lord Jesus Christ entrusted His entire flock, without limits, without any reservation. "Feed my sheep... feed my lambs" (John 20:16, 17). Therefore, they intruded into the vineyard of the Lord to devastate it; cuttings torn from the vine, they clung to exotic plants, vainly flattering themselves that they could bear fruit; far from supporting the Spirit of God, the author of concord, they have become the servants of powerful men, according to the flesh, to the mother who nurtured them. "He that loveth me not keepeth not my words. And the word which you have heard is not mine; but the Father's who sent me" (John 14:24); while it is written concerning the Divine Paraclete that He is sent by the Father and the Son to accomplish the work of sanctifying souls: "The Paraclete is the Holy Spirit, whom the Father will send in my name" (Ibid., 26); will these self-appointed apostles presume to speak in the name of God, without any authority? They are not unlike the prophets who, according to Jeremiah, are condemned because they take the initiative without a mandate, and, lacking divine inspiration, they prophesy (Jeremiah 23:21). They follow in the footsteps of the heretics whom St. Cyprian depicts as leading a crowd of people without being asked, people who allow themselves to be led astray by idleness and carelessness (Lib. de Unit. Eccl.). But truly, "No one takes this honor to himself, but he who is called by God, just as Aaron" (Hebrews 5:1). The Levite awaits the Bishop; the Bishop, in turn, glories in being subject to the Roman Pontiff, to whom the Lord Jesus Christ entrusted His entire flock, without limits, without any exception, in the person of Peter. "Feed my sheep... feed my lambs" (John 20:16, 17). Thus, they intruded into the vineyard of the Lord, to devastate it; they are cuttings torn from the vine, clinging to exotic plants, vainly flattering themselves that they can bear fruit. Instead of supporting the Spirit of God, who is the author of concord, they have become the servants of powerful men, according to the flesh, to the mother who nurtured them.

[*Latin ed. p. 168*]

168 Those who, according to the flesh, wage war against the mother who nurtured them, and who, with unseemly harshness, turn against those who have shown them great affection and benefits, have thereby written their own condemnation. For, as St. Jerome writes, those who have gone forth from the Ark are destined to perish in the flood; and as St. Cyprian adds, those who abandon the Chair of St. Peter, upon which the Church is founded, how can they claim to still belong to the Church? (De Unit.

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Eccl., c. 4). And what place remains for them in the fold of Christ the Lord, when they have strayed from the fold of Peter, to whom all was entrusted? (St. Bernard, De Consil., Lib. 2, c. 4). Therefore, their action, besides being sacrilegious and subversive of ecclesiastical discipline, is inherently schismatic. But as if the weight of so many sins were not enough, they aggravate it with the worst of all evils: heresy. It is no secret (it is evident from the very purpose of the Congregation, stated in the preamble to the statutes) that they, embracing the sentiments of the so-called "Old Catholics," a sect, among all the heretical sects, the most recent, which for nearly thirty years has been striving to destroy the Church, attack the primacy of jurisdiction and the infallibility of the Roman Pontiff when he defines, as they claim, from the Chair, in matters of faith and morals: they are therefore manifest heretics. Nor is it a secret that they foster sympathy for the Gallican Church, wretchedly born of Hyacinth Loysons.

[*Latin ed. p. 169*]

This [association] displays a certain sympathy for what is called the Gallican Church, miserably engendered by Giacinto Loyson. This [association], besides agreeing with the errors of the Old Catholics, eliminates the Sacrament of Confession under the pretext of making it free and moral; it denies to the Virgin Mary the dogmatic title of Mother of God; it distinguishes, with regard to origin and authority, the protocanonical books from the deuterocanonical books of the Bible; it assigns the schismatic Orientals and the Anglicans to the true Church. It is from this [association] that the dissidents from the Via [Genoa] receive inspiration, encouragement, and assistance; and they consider this [association] to be the religion best suited for cultivating the people and for the needs of the present age (Statute, ibid.), preferring it to the true Catholic religion. Moreover, in the books disseminated among their converts, they introduce other errors. For example, "God Almighty has given His ministers the authority and the command to declare and pronounce to the penitent people absolution and remission of their sins" (in their Vespers and Daily Office, p. 2); whereas the Gospel declares most explicitly: "Whose sins you shall forgive, they are forgiven them" (John 20:23). In their Psalms, they deny the infallibility of the Church, when it is sung of her: "Make her be born again in us; Make her be as she was before" (Psalms and Hymns, Rome, 1882, Hymn 58, p. 62). And concerning the Most Holy Eucharist: "This bread commemorates..."

[*Latin ed. p. 170*]

170 NOTIFICATION: This bread reminds us of Jesus' immense love; it represents His body, which He offered for the sinner. This wine, the emblem of the Lord's blood, will be for us (Ib. Cant. 132, n. 131). Here, the clear denial of the real presence of Christ under the Eucharistic species shines forth, and the heresy of the Berengarians is preached in verse. Add

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to this the concealment of Catholic truths, the absence of any invocation of the Immaculate Virgin, the Angels, and the Saints, the frigid breath of Protestantism blowing from beginning to end in these books, and then deny, if you can, that the so-called Congregation of St. Paul of the Italian Catholic Church is manifestly heretical. Indeed, these two appellations mutually negate each other; the former designates the entire world, while the latter designates a nation, albeit a most noble one, which, nevertheless, is embraced with maternal charity by the Church. The following statement of Augustine against the Donatists is applicable to this case: "The blood of Christ is the price of the common redemption: how much is it worth, if not the entire world? How much, if not all the nations? They are ungrateful for their price, or exceedingly proud, who say that it is so little that it only redeemed the Africans; or that they are so great that it is given only for them" (In Ps. 95). Therefore, they cannot boast of the name Catholic, who claim to be defenders of a national religion. But is it true that their cult is truly national in Italy?

[*Latin ed. p. 171*]

The title of "catholics" is given to those who profess to be supporters of a national religion. But is it truly the case that their worship is national in Italy? The idea is foreign, taken from the older Catholics, to whom they have even recently turned in order to forcibly impose the Holy Spirit upon one of their adherents. The practice is also foreign, borrowed from a few Gallicans of Loyson and from the Ritualists; what remains for us Italians? Let them remember that in Italy, the two Socinians and Sarpi were entirely exceptional, and that the rule protects those who, in every order of sciences and arts, both illuminate the native peninsula and the universal civilization, as well as the Holy Religion. From Constantine to us, the most sublime pages of Italian history were written by the Papacy, and there was no beautiful, noble, or useful institution that did not have the Popes as its patrons. Let them remember that heresy does not gather clouds in vain under the Italian sky: for the character of the Italian people is such that, if the Italian clings to God, he is Catholic; but if he unfortunately detaches himself from Him, he does not remain in the middle, nor does he even deign to greet the halls of the Protestants, but, with unhappy fate, he slides down the slippery path of impiety and is hurled headlong into the abyss. Therefore, the Congregation of St. Paul of the Italian Catholic Church is heretical; the functions of worship performed by it are sacrilegious, and neither it nor these can be called a proper pursuit.

[*Latin ed. p. 172*]

172 NOTI] it is possible to attend, without incurring censure. Therefore, applying to this case, also in virtue of particular faculties delegated to Us by the Holy Father, the declaration issued by Our Most Eminent Predecessor,

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in his praised Instruction of July 12, 1878. (*)

1. Those who, even without the intention of adhering to heresy, and solely out of human respect, ascribe themselves to, or in any other way give their name to said Congregation, incur the greater excommunication, reserved to the Pope among the most special, just as if they were joining other damned sects.

2. With stronger reason, those who take part in the functions of said Congregation, or listen to the preacher with the intention of yielding to him, incur the same penalty, if indeed, as they impiously say, he persuades them.

3. Those who, having become the authors of the spiritual ruin of others, in any way induce others to attend the functions, sermons, or conferences of that sect, are likewise subject to the same censure.

4. Finally, all those who publish with the press invitations to sermons or conferences, or the themes of these or those, are bound by the same censure, for the favor they show to the *Catholicae Italicae*, as it calls itself: the sacrilegious rites it uses, and the supplications it performs; nor is it permitted to any Catholic to give his name to the same, lest he incur ecclesiastical censures. Therefore, using even special faculties granted to Us by the Pontiff, We apply what Our Most Eminent Predecessor decreed in his Instruction of July 3rd in the year 1878.

1. All those who, even without the will to adhere to heresy, and solely for the sake of human respect, or for any other reason, give their name to that Congregation, are subject to the greater excommunication, which is reserved to the Roman Pontiff among the most special. This is precisely as if they were joining other damned sects.

2. Those who take part in the functions of worship, or who lend their ears to the preacher with the intention of assenting, are subject to the same penalty with stronger reason, if indeed, as they impiously say, he persuades himself.

3. Those who, having become the authors of the spiritual ruin of other men, in any way induce others to attend the worship functions, public sermons, or discussions of that sect, are subject to the same censure.

4. Finally, all those are bound by the same censure who publish invitations to sermons or discussions in printed form, or who publicly announce the themes of these or those, for the favor they show to...

(*) This Instruction is found in Volume XI, page 168.

[*Latin ed. p. 173*]

Thus are things related to the spreading or confirming of heresy. And since it is written, "He who loves danger shall perish in it" (Ecclesiasticus III, 27), those are declared to be gravely guilty who, even out of mere curiosity, enter the hall of that Congregation, when a sermon is being preached

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there, or when the offices are being performed; and even more so if anyone, even with an intention alien to heresy, is present there. In the second book of Kings (XXI, 10), it is recounted how Respha watched over her sons day and night, as they hung lifeless from the cross. The piety of that poor mother, which so moved David, is celebrated even now with ample praise; and the piety of the Church in defending, not only the bodies from the ravages of beasts, but the souls of her children from the snares of enemies, will that vigilant solicitude of maternal love be attributed to hardness of heart? For there is indeed a certain cruel piety, which strives with all its might to conceal the sins of others, and to open the way to errors, while meanwhile doing nothing for those whom it sees plunging into the abyss. This is not the piety of the Church. On the other hand, there is a certain cruelty, which cries out, threatens, and restrains; but in order to save the innocent and to raise up the fallen, so that none may rot in the stench of vices: this indeed is the hardness, this the cruelty of the Church. "Better," says the inspired Author of Proverbs (XXVII, 6), "are the wounds of a friend."

[*Latin ed. p. 174*]

174 NOTIFICATION: They depict that cruel piety with the kisses of the hater; but this piety, filled with genuine affection, reveals the harshness of the loving one through its rebukes. Give ear, O Romans, to the lamentations of so great a Mother: "Honour thy father, and forget not the groanings of thy mother" (Sir 7:29). Heed the grave admonitions of your Father, who laments the ruin and destruction of so many sons, and thus alleviating His sorrow, you will prepare the incorruptible Judge to be merciful towards yourselves. "Better are the wounds of the loving one than the deceitful kisses of the hater" (XXVII, 6). That cruel piety depicts the kisses of hatred; this pious harshness reveals the rebukes of love. Listen to the lamentations of so great a Mother, O Romans. "Honour thy father, and forget not the groanings of thy mother" (Eccles. VII, 29); listen to the authoritative warnings of your Father, who laments the harm, who laments the loss of so many sons, and by consoling His sorrow, you will prepare the incorruptible Judge to be merciful towards yourselves.

From Our residence, on the Feast of the Archangel Saint Michael, September 29, 1884.

Given from Our houses on the Sacred Feast of the Archangel Michael, September 29th, in the year 1884.

L. M. CARD. VICARIO

L. M. CARD. VICARIUS

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AUGUSTUS Can. BARBIELLINI

Secretary

AUGUSTUS Can. BARBIELLINI

Secretary

Most Reverend Monsignors, the Rectors will read this Notification to the people on a festive day and explain it.

Most Reverend Monsignors, you will read this our Notification to the people on a festive day and explain it.

[*Latin ed. p. 175*]

175 APOSTOLIC LETTERS of the Most Holy Pope Leo XIII, concerning the erection of the Urban College of the United States of America. When the most extensive regions of North America, having been populated by colonies drawn from Europe, began to experience a flourishing of peoples, Our Predecessor Popes, turning their attention to that region in which the most flourishing Republic was established among the federated states, devoted all their concern and efforts to ensuring that the Catholic faith and all that flows from it would remain, not only among the faithful, but also among the nations, whether barbarians or those immigrating from various parts of the world, intact, even though they differed in origin, language, customs, and religion.

To achieve these salutary results, it has been most effective, both the selection of apostolic men whom We have never ceased to send from all quarters to those provinces, and the diligent and constant care of the Sacred Congregation for the Propagation of the Faith, whose counsel and ministrations these men have always employed, in order to promote the spiritual well-being of North America.

Furthermore, the same Sacred Congregation, working for Our Predecessors, and as a further demonstration of its concern for that region, also took care to ensure that students from that region admitted to the Urbanianum College would, from among them, be chosen each day new heralds of the Gospel in the city, the principal city of the entire Christian world, and that they would be suitably instructed in piety and knowledge, for the benefit of the peoples of North America, before the very eyes of the Pontiffs.

But the illustrious people of that region have responded to so many testimonies of the affection of the Supreme Pontiffs in such a way that they have fully satisfied the expectations they had aroused. For they have always given excellent evidence of their devotion to the Catholic religion, and of filial obedience and devout will towards the Apostolic See. And they have shown themselves to be bound to it by firm bonds of loyalty. In this regard, the Pastors of that sacred region claim as their own a special merit, whose

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concordant and constant labors have brought about, in a short time, that a vast Episcopal Hierarchy, established through the aforementioned states, religious Orders, and the spread of Catholic institutions, have flourished as a new spiritual kingdom of the Church in those regions.

Seeing this with great consolation, the Roman Pontiffs have considered it their duty, and an expression of their paternal benevolence towards that illustrious part of the Lord's flock, to strive for even greater benefits for it.

[*Latin ed. p. 176*]

176 APOSTOLIC LETTERS: concerning matters to be carried out. Wherefore, Our most illustrious Predecessor, the blessed and revered Pope Pius IX, considered nothing more useful for the growth of religion, nor more opportune for the munificence of the Holy See, than to provide that, just as many from other foreign nations, so too the states of the United States of America should have their own house in the City, in which chosen young men might be instructed in sacred studies and sacred discipline, so that they might afterwards exercise a fruitful priestly ministry in their own homeland. — This, which Our illustrious Predecessor had happily conceived, He also undertook to bring to fruition without delay. And so, at His command, a house was purchased in the City by the Sacred Congregation for the Propagation of the Faith, which had previously been the College of the Sacred Virgins of the Visitation of the Most Holy Virgin, and was dedicated to the students of North America, and was permanently assigned for that use; and, furthermore, in the year 1858, on the solemn day of the Assumption of the Blessed Virgin Mary, letters were issued by the same Sacred Congregation, by which the erection of the same College for the states of the United States of America was decreed. The College itself was indeed dedicated with happy auspices on December 8th of the following year; but nevertheless, until this day, it remained that an Apostolic document should be issued, by which it would, according to the established custom and practice of this Apostolic See, receive the canonical force and validity of its erection. — For this reason, the Venerable Bishops of North America, who had convened in this venerable City at the end of the preceding year to deliberate on important matters of religion, offered fervent prayers to Us through the Venerable Archbishop of Baltimorensem, that We might, by Our authority and care, bestow honor upon the work, which had not yet been completed by the College of their region. And so, without hesitation, We decided to comply with the common wishes of those Venerable Brothers, and, desiring to follow up the American region with this new testimony of love, We hereby confirm with Apostolic authority, according to the tenor of the present document, the decree issued by the aforementioned Sacred Congregation concerning the establishment of the College for the Clergy of the United States of America, together with all that is contained therein, and We add to it the inviolable strength of the

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Apostolic See; and furthermore, for the greater glory of God, for the growth of the Catholic religion, and for the honor, utility, and benefit of the great Republic of the United States of America, We hereby, by the tenor of the present document, erect and establish the same College in this venerable City, according to the canonical norms, and We adorn it with a Pontifical name and title, and We grant to it all the rights, prerogatives, and privileges proper to such Colleges, according to the laws which follow.

[*Latin ed. p. 177*]

LETTERS APOSTOLIC 1! » ● i 177 I. The Cardinal of the Sacred Council, for the time being entrusted with promoting the Christian name, shall be the perpetual Patron of the College; and, when he deems it opportune, he shall have the right to choose and appoint an assistant to aid him in this office.

II. The entire administration of the College shall be managed by the Archbishops and Bishops of the federated States of North America, or by Prelates legitimately deputed by them for this purpose.

III. The Archbishops and Bishops to whom the administration of the College has been entrusted, when they wish to appoint a moderator to govern the students of the College, shall propose three priests who appear suitable for this office to the Sacred Congregation for the Propagation of the Faith, so that from among them the Supreme Pontiff, after consultation with the Sacred Congregation, may choose the one whom he will appoint as Rector to govern the College in his name and with his authority.

IV. The Rector shall obey in all matters pertaining to the governance of the College the authority of the Most Reverend Patron and the Bishops who are administrators of the College, and shall render to them a detailed account of the affairs of the College each month.

V. The Rector, in order that he may more expeditiously and usefully perform his office, shall make use of suitable assistants in matters concerning the economic administration of the College, as well as in matters concerning the discipline of the students. Therefore, with the approval of the Most Reverend Patron, it shall be his prerogative to appoint a suitable priest as his vicar, and to propose a curator of the College's affairs to the Most Reverend Patron and the Bishops who are administrators, and to establish him with their consent, who shall depend on the Rector's authority and guidance in the exercise of his office.

VI. The Rector shall preside over all, not only the students, but also all the major and minor administrators of the College.

VII. No one shall be admitted among the students unless he is a citizen of the federated States of America by reason of origin or domicile or quasi-domicile, and satisfies the established conditions, and has been approved for his talents and morals, and gives firm hope that he will perpetually

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serve in ecclesiastical ministries.

VIII. The Rector of the College shall act in concert with the Bishops to whose Dioceses the new students belong; and he shall report to the Most Reverend Patron about each of those who are to be admitted, and shall present the students to the Most Reverend Patron before they enter the College, or before they return to their homeland.

IX. The students shall, before being promoted to the sacred Orders, make a solemn vow, as is customary in Pontifical Colleges.

X. *Collegii Urbani fidei Propagandae scholas Americam Alumni Acta, Tom. XVII. fase. CXCYI.*

[*Latin ed. p. 178*]

178 APOSTOLIC LETTERS are to be celebrated for the purpose of studies, and there, let them acquire the degrees of academic learning through the experience of doctrine. — But in order that they may more abundantly progress in their studies, a priest, distinguished in the sciences of theology and philosophy, shall reside among them, who will be of assistance in explaining and illustrating the subjects undertaken in the lectures. XI. As for the spiritual care of the students, it will be the duty of the Rector to select, with the approval of the Most Reverend Vicar of the City, a priest to hear confessions, as a master of piety and an ordinary confessor who resides in the buildings of the College, with the consent of the Most Reverend Patron; and this priest, thus chosen, shall diligently and prudently strive to lead the students to virtue and to the knowledge of the Saints. XI. In the discipline of the students, the rules or laws of the College of Urban Propagation of the Faith, suitably adapted and accommodated to the particular circumstances of the American College, shall be carefully observed. Finally, we decree that these Our Letters, being firm and valid, shall remain in force for the future, and shall be declared void and of no effect if anyone should attempt to alter anything concerning these matters: notwithstanding any contrary things. Given in Rome, under the Fisherman's ring, in the year one thousand eight hundred and eighty-four, on the twenty-fifth day of October, in the seventh year of Our Pontificate. - F. CARD. CHISIUS. FROM THE HOLY CONGREGATION OF THE COUNCIL OF VARMIA. IMPEDIMENTS TO MARRIAGE. On the 14th of June, 1884. SUMMARY OF THE CASE. In the year 1878, Franciscus K. and Augusta Z., fostering mutual affection, decided to enter into marriage. But Elizabeth, the mother of Francis, opposed this marriage, declaring that this son was indeed conceived after the marriage with...

[*Latin ed. p. 179*]

WARMIEN. To the aforementioned man, Andrea, and therefore inscribed in the parish register as a legitimate son, but in truth born from an illicit union, which he had before marriage with Joseph, the

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father of Augusta. Nevertheless, as the Ordinarius of Warmien reports, the parents of Augusta connived, indeed approved, and the marriage negotiations between Francis and Augusta continued. And since she had conceived a child from this illicit relationship with Francis and was pregnant a second time, in May of 1880, a marriage, which is commonly called civil, was concluded between them; although the civil official requested from the higher magistracy that action be taken against Francis for the offense, which was prohibited by a higher mandate because Francis was inscribed in the baptismal register as a legitimate son. However, with this judgment of the civil court pronounced, the now deceased parish priest refused to assist in the ecclesiastical marriage due to the aforementioned impediment. Therefore, Joseph, the father of Augusta, petitioned the Bishop of Warmien in writing, requesting that the parish priest be compelled to bless the marriage. The Bishop entrusted the matter to his Vicar, instructing him to investigate diligently. After conducting an investigation, hearing witnesses from here and there under oath, and after careful deliberation, on December 15, 1880, he decreed: that a marriage could not take place between Francis and Augusta due to an impediment of the first degree of consanguinity: namely, because they are born of the same father; regarding which impediment, a dispensation is never granted by the Apostolic See. Furthermore, he ordered that the aforementioned betrothed be separated from each other, and that both they and the parents of Augusta be prohibited from receiving the sacraments, unless they first cease to protect the scandalous conduct of the daughter. For three years, the situation remained as it was, until finally, in November of 1883, Joseph, the father of Augusta, appealed to the Holy See, explaining that the mother of Francis had deceived the now deceased parish priest... and had told him that the young man, who was now about to contract marriage, was born to her outside of marriage from the very father of Au-

[*Latin ed. p. 180*]

180 WARMIEN. Augusta... After the marriage ceremony had been completed by the civil authorities, the parish priest refused to perform the marriage sacrament and insisted that the couple separate; which, however, is impossible, since three sons have already been born to them, and the same couple are legally married: which law does not permit separation. Therefore, the advocate requested that Francis and Augusta be admitted to the marriage sacrament. Synopsis of the Discussion. THE JUDGMENT OF THE COURT MUST BE OVERTURNED. There appear to be several objections to the judgment of the Varmiensis Court. Firstly, there is a general presumption, based on law, that a child born within a valid marriage is to be considered legitimate, unless proven otherwise by valid arguments; for the law states, "The father is he whom just nuptials demonstrate," in chapter 2, and "these are the sons who are legitimate, and in the law Nuper-

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11 Cod. de natur. liber. Indeed, from the records, we discover that Francis was born to Elizabeth and Andrea, a marriage which was celebrated seven months before Francis's birth. Furthermore, from the records, we know that Andrea, although far away at the time of Francis's birth, had carnal knowledge of Elizabeth a few days before the marriage ceremony, as she herself confesses. Therefore, since Francis has been registered in the baptismal records as the legitimate son of Elizabeth and Andrea, and Andrea has not objected, and since he has been treated as Andrea's legitimate son by the civil authorities, who furthermore ordered the civil marriage between Francis and Augusta to be performed; this argument would seem to be conclusive proof of Francis's legitimacy. However, this presumption cannot be excluded by any direct argument, but rather seems to be further strengthened by the fact that, before the marriage, Elizabeth, as the records demonstrate, had relations with neither one nor the other. Indeed, two witnesses testified to carnal relations with Eli-

[*Latin ed. p. 181*]

WARMIEN. Elizabeth has stated that she had relations with him; and Joseph himself, although he does not deny that he had intercourse with her in September 1847, nevertheless affirms that it was not consummated and that no seed was emitted. Given these circumstances, it seems that nothing certain can be established to prevent the marriage of Francis with Augusta. For we are dealing with the establishment of a marriage impediment; which is odious and contrary to the freedom of marriage, especially since the matter concerns an impediment for which the Church never grants a dispensation. We are dealing with the establishment of a crime, the nature of which is difficult to prove in its effect, because it ordinarily remains hidden and unknown; for it is a principle of canon law that intercourse is not proven by appearance; *Concii, lib. 2, mjp. 14, § 1*. Therefore, in law, not indications and presumptions, but the certainty of facts are required. Hence, Doctors, with regard to this matter, only admit the most conclusive proofs, namely, those that demonstrate a perfect and consummated act; and which, they say, are sufficient to demonstrate in general a carnal offense, but not sufficient to prove adultery, rape, or incest. "All obscene acts," says Ciaz, *Discept. 2, n. 153*, "are not proven by indications and presumptions, but by two opposing witnesses, of place and time, suitable and superior to all exceptions, who testify to the consummated and perfectly completed act of said intercourse." *A fortiori*, this must be said regarding the establishment of an impediment of consanguinity, in which, as the Doctors say, not only is intercourse by itself suitable for procreation sufficient, but it is also required that generation actually follow from this intercourse, and not from another. What, then, is presented regarding the impediment in this case? All the proofs presented to destroy the credibility that he has always deserved are reduced to the late claim of Elizabeth,

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although confirmed by oath, while, on the other hand, Joseph denies any consummation. Hence, how much weight must be given to the testimony of a single woman, no one can fail to understand. Furthermore, since the testimony of one person is the testimony of no one, in this case...

[*Latin ed. p. 182*]

182 VARMIEN. It happens that, lacking any credibility, and openly displaying her wickedness, she is never heard. For, according to the canons, a witness must be renowned for his reputation and conduct in order to be able to validly attest to the truth; Chapter. Furthermore, concerning those who accuse a woman of adultery, it is possible. But such does not seem to be the case with Elizabeth, whose reputation before marriage was not outstanding, as if she herself were guilty. Moreover, for Elizabeth's testimony to be considered valid, she must swear an oath; for this is not sufficient unless it has been corroborated by suitable witnesses; Chapter 3, Concerning the one who knows. Indeed, theologians, in matters of this kind, demand such complete and evident proof that they do not hesitate to affirm that, even if a mother, at the point of death, declared under oath that her son was born outside of marriage, no credence should be given to her. Nor was such an oath considered reliable by the Holy Congregation in Seywgallien, on August 17, 1805; in Fer entinen, on July 5, 1856; and in Pisauren, on May 22, 1875. Finally, it must be noted that all of this business concerning Elizabeth revolves around the antipathy with which she is afflicted towards Augusta, and therefore, she preferred her older sister. This is what several witnesses, under oath, testified to, stating that they heard Elizabeth say "that she would not object if her son married the older daughter, Catherine, of Joseph." What, however, has been the practice of the Holy Congregation in such cases, can be found in Ravennaten, in the marriage of September 13, 1721; Zamboni, in the word "marriage," § 9; and in Pientina, in the marriage of March 20, 1732. "Around the year 1732, the betrothal between Francis Giannini and Lucretia Cantelli took place. Shortly thereafter, Virginia, the mother of Lucretia, who had previously been the wife of Bartolomew Cantelli, and after his death married Angelo Carontio, under oath, declared before the records of the episcopal curia that she had conceived that son not from Bartolomew, her former husband, but from an illicit intercourse with John Carontio, the uncle of the aforementioned Francis Giannini, with whom Lucretia contracted the betrothal, and therefore, the marriage between them would be impeded by canon law."

[*Latin ed. p. 183*]

WARMIEN, 183, concerning the impediment of consanguinity. Nevertheless, the Reverend Father Francis [and Lucretia] decided to enter into marriage. And so, in Bobien, Matrim. on February 16, 1742, and in Balne-

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oregien, Impedim. on June 16, 1770, to mention only these. THE DECREE OF THE COURT MUST BE CONFIRMED. On the other hand, arguments of no less importance seem to suggest that the court of Warmien acted wisely. And first of all, it must be remembered that matrimonial causes, in which a marriage is either prevented by some impediment, or dissolved if already begun, are counted among the popular causes; therefore, not only those concerned, but also friends and relatives in the closest degrees can be accusers and witnesses. Chapter 22 concerning witnesses, and those who testify. And chapter 3 seems to indicate that anyone can accuse a marriage. Indeed, it is a grave duty incumbent upon every faithful person to reveal an impediment to marriage, even if he alone has knowledge of it and cannot prove it. St. Liguori, tract. de matrim., n. 995. Therefore, moved by this obligation, Elizabeth immediately, upon hearing of the marriage negotiations of her son with Augusta, went to the court, declaring: < that in September 1847 she had carnal intercourse with Joseph, and that she became pregnant as a result, and that she presented proof of this, in order that the marriage with her former fiancé, Andrew, might be celebrated as soon as possible, from whom she already had one child in the year 1844, who at that time was serving in the military, and according to the testimony of the military office, he was discharged from the castle of Königsberg on September 30, 1847, which was done on November 23, 1847. After the return of the fiancé, she did not have intercourse with him, except for a few days before the wedding. She affirmed that this child, born from the illicit intercourse with Joseph, was Francis, whom she gave birth to on June 2, 1848. > And since the husband was again absent at the time of the birth of this child, she took care to have the child registered as the legitimate son of Andrew in the baptismal record. Given this, it is a common teaching among the Doctors that when a marriage is prevented by an impediment...

[*Latin ed. p. 184*]

184. VARMIEN. If the mother of the bridegroom or bride alone asserts the existence of a blood relationship between them, they must not, in any way, be joined in marriage. Thus, Schmalzgrueber, volume IV, part III, number 70, in the chapter concerning this matter, number 22, regarding witnesses, and others. Vivian, in the reasoning V, concerning the aforementioned chapter, Laym, number 3, Barb, number 9, and others. And indeed, this is fitting: for the most complete and thoroughly certain proofs are required when it is a question of establishing an impediment to marriage, dissolving a marriage already begun, so that the Sacrament of Christ may not be exposed to profanation and contempt through human passions or misfortunes. Therefore, when the reason for favor is lacking, as in this case, any proof, even a slight one, of the existence of an impediment may be sufficient to prevent the marriage, without it being necessary to precede it with a rigorous and evident demonstration. Hence,

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in the Asculana Matrim, of June 4, 1768, §. Concerning the manner..., it is commonly stated: "Concerning the manner of proving the impediment of affinity," it is distinguished whether it concerns a marriage already *contracted*, and then a complete proof is required; or whether it concerns a marriage not yet *contracted*, and then a slight proof is sufficient to prevent it. Thus, Alexander III responded in Cap. concerning this matter, number 22, regarding witnesses; thus, Consci de separat, in his book 1, chapter 6, number 3; thus, the Rota, in the decree of 1317, before Lancellotti. Therefore, the Sacred Congregation, in the Anconitana Matrim, of August 6, 1712, resolved: "That there was no place for the celebration of marriage, before the Church, between the Count Charles Ignatius Nappius and Catherine Casserari, due to an intimate condition: but rather, some impediment existed. For the Episcopal Curia had previously prohibited it, both because of the dishonorable conduct previously exhibited with Mary Magdalene, and because he had claimed that he had conceived the same Catherine from an unjust union and that she was his daughter." And in the Fulginatena Matrim, of January 22 and September 17, 1767, "To spouses who had entered into a marriage contract between Peter Iacomini and Cecilia Severoli, and had confirmed it with an oath, while they desired to be joined in marriage, a canonical impediment was imposed by the Episcopal Curia, from which Cecilia suffered greatly."

[*Latin ed. p. 185*]

WARMIEN. One hundred and eighty-five. It was reported that a certain female servant had seen the German brother, Peter, in a state of concubinage with a woman. Therefore, the question arose whether there existed a canonical impediment, or rather, whether there was a place for the celebration of marriage; the Sacred Congregation responded to the ordinary, instructing him to permit the publication of banns and to proceed with the investigation. The marriage was announced, and based on the testimonies of several witnesses, the public prosecutor asserted that an impediment existed. Consequently, the cause was renewed, and the Bishop was ordered to prohibit the aforementioned marriage. "Furthermore, there are other supporting elements to corroborate the declaration of Elizabeth. Firstly, her husband, Andreas, testifies that he has 'never had' the aforementioned Franciscus as his son, and that he has heard this belief confirmed by others; although they spoke about this matter after Andreas' return from military service, they remained silent, having done nothing to correct the inscription made in the baptismal register, and they provided clothing for the child. Secondly, Elizabeth's parents, and especially Francis' uncle, have left no stone unturned to prevent the promotion of such a marriage; for they believe that Joseph is the natural father of Franciscus. In addition, there is the testimony of Franciscus Bauer, Elizabeth's brother, of Johannes Wenzel, a servant of Elizabeth's parents, and of Joseph Kramkowski. All of these

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elements appear to be sufficient to sustain the Decree of the Tribunal in all respects. For, according to chapter 2 concerning consanguinity, and chapter 27 concerning the testimony of witnesses, the existence of an impediment, based on reputation alone, can be sufficient to prohibit a marriage. Nor does anything weigh in favor of the argument derived from the opinion of the civil magistrate; for he did not investigate the matter concerning illegitimacy, but, relying on the faith of the baptismal register, in which Franciscus is inscribed as the legitimate son of Andreas and his wife, Elizabeth, he ordered the civil marriage to proceed. Nor can anything of serious consequence be adduced against the existence of the impediment based on the dishonorable conduct that Elizabeth has been found to have had with several men. Since the witnesses of such conduct, under oath, denied any involvement with Elizabeth..."

[*Latin ed. p. 186*]

186 LIDZBARK WARMIĘSKI. Elizabeth, concerning the scandalous custom during the time of Francis: and regarding this matter, James Junker, from the year 1846 to 1849, was assigned to military service in that region. As for the words of Elizabeth herself, she declared that she was indeed not opposed if her son, Francis, were to marry the elder daughter of Joseph; however, Elizabeth stated that she had never desired that her son, Francis, should marry the elder Catherine. Therefore, any suspicion regarding Elizabeth's involvement in human affairs seems to be unfounded. On the contrary, Joseph appears to deserve no trust, both because it is evident from the records that no oath was given to him, and because he is considered the principal author of the scandal, since he tolerated concubinage in his home for so many years. Given this situation, it is clear how Elizabeth's declaration should be valued: namely, that the union with Elizabeth was not consummated in a perfect manner, because at that time he was unaware of the shedding of seed, and he was already 22 years of age. With these matters explained, the purpose was to resolve the doubt. Whether the decree of the court of Lidzbark Warmięski should be confirmed, or rather, upheld in this case. RESOLUTION. After careful consideration by the Holy Congregation, on the 14th of June, 1884, it was decided to respond: The decree is to be confirmed. FROM WHICH IT MAY BE GATHERED: I. All the Sacred Canons impose the obligation of revealing any impediment that prevents a marriage from taking place, whenever the matter is raised of preventing a marriage from beginning, or of dissolving one that has already begun; hence, matrimonial causes are called popular causes. II. A rigorous and evident demonstration is not required to prove the existence of an impediment when it is a question of a marriage about to begin; because there is no reason for a presumption in favor of preserving the sanctity of the sacrament, as occurs in a marriage that has already begun; and any

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proof, even a slight one, may be sufficient for this purpose.

[*Latin ed. p. 187*]

WARMIEN. 187 III. It can in no way be permitted for those to be joined in marriage, among whom the mother of the bridegroom or bride has revealed the existence of consanguinity, especially if other supporting elements are present that strengthen such a revelation. IV. The denunciation to the mother of the bride, in this case, lacks any other supporting elements that would add weight to her words, and thus constitute such proof that a marriage cannot be lawfully entered into before the Church.

WARSAW. DECREE OF SEPARATION. June 14, 1884. SUMMARY OF THE CASE. In the year 1861, Francisca contracted marriage before the Church with Stanislaus; however, shortly after, quarrels and disagreements arose between the spouses. Indeed, the aversion towards the husband, on the part of the woman, grew to such an extent that on April 29, 1881, she presented a petition to the archiepiscopal court of Warsaw, in which, accusing her husband of cruelty, harassment, and adultery, she demanded a separation concerning the bed, cohabitation, and table for an indefinite period, due to the husband's fault, and declared herself ready to provide all witnesses to confirm her claims. Regarding this matter, a process was conducted in the Warsaw court by a delegated judge, with all legal procedures completed. Although the husband vehemently denied everything, his assertions were not such as to completely undermine the force of the testimonies presented by the plaintiff. Therefore, the Warsaw Consistory, on July 8, 1882, delivered a final judgment, by which "Stanislaus and Francisca, the spouses, are granted a separation of the bed and table for an indefinite period, due to the fault of the aforementioned husband."

[*Latin ed. p. 188*]

188 WARSAW. From this judgment, Stanislaus interposed an appeal to the Apostolic Tribunal of second instance in Lublin, who, after the records of the prior judgment were reviewed, annulled the aforementioned judgment, as it lacked foundation, and ordered the aforementioned spouses to continue living together in harmony and Christian love. However, the woman appealed from this judgment to the Holy See, and the Archbishop of Warsaw, having been consulted regarding this matter, stated: "On my part, I agree with the judgments of my predecessor... and I consider the judgment rendered by him to be just and in accordance with canon law." He endeavored to demonstrate this through various arguments. Synopsis of the Discussion. DEFENSE OF THE WOMAN (1). It is certainly not unknown, said the advocate, that the marital bond must be perpetual and indissoluble between spouses. Indeed, both divine and human law establish its indissolubility, because it is of interest not only to the state that those

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who are united in the society of the marriage covenant remain together for the purpose of procreation, but also to the Church, both because of the Sacrament, by which they are united by God and cannot be separated by any agreement, and also because of the fear of the danger that, if one spouse is absent, the other may suffer something human. Therefore, nothing is more repugnant to good law than to dissolve the unity of the marital consortium; and it is well established that no causes for separation should be admitted in the ecclesiastical forum, except those which are truly very serious, and those which are proven by all the evidence; Cap. *De causis matrim., de test., cog.* or not. Cap. *Litteras de restii, spoliat.* Constant. Vot. decis. 392 no. 1, § 4, see Congregation in Fermo, *Separ. thori*, May 16, 1869, §. Res, Rota decis. 815 no. 2, before Buratto, Decis. 72, no. 1 and 2, before Durano, in Anconitana *Obseq. matrim.*, December 9, 1763, § 2, before (1) The man, after the judgment of the Judge of Lublin in his favor, submitted to the prudent judgment of the Holy See; the woman, however, defended her rights through her advocate.

[*Latin ed. p. 189*]

WARSAW. 189. Zelada, and in Rome or Sabina. Separated. Tribunal of June 23, 1820 §. 2. Before Tiberius and decided. 15, number 2. Before the Most Reverend. Several, but especially through Francis, causes are presented for the separation: namely, repeated acts of cruelty by the husband, accompanied by verbal insults, aversion or hatred, a well-founded suspicion of adultery, dilapidation of the patrimony, and finally, the incorrigibility of the aforementioned husband; all of which render cohabitation impossible, without further harm to the body and soul. Regarding the acts of cruelty, the woman affirms that she has indeed suffered them, frequently and without cause, not only before the judge of Warsaw, but also in a supplication presented to the Most Holy [Pope]: she states that her husband is a man without any principles, endowed with a changeable character, who treats even the fundamental aspects of life lightly, is prodigal and sensual... "I have long endured much in silence, hoping for a change in my husband; but in vain, for he becomes worse with each passing day. Therefore, sensing a certain and imminent evil that threatens my ruin and that of my children, albeit with a heavy heart, I have recourse to the ecclesiastical court, requesting a separation, especially so that my children may be removed from the bad example of their unfortunate father." All the witnesses, both those presented by the woman and those summoned by the Warsaw court, give full credence to the woman's declaration, testifying that Stanislaus is of a violent nature and a cruel spirit, that he mistreats his wife, and that he has insulted her with calumnious and injurious words. Indeed, the woman's declaration seems to deserve consideration, because 1. it is not a matter of dissolving the marriage, but of a mere material separation; hence, according to *Rota Decis.* 20, number 12, before Coccino; and *Decis.* 105,

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number 8, page 18, number 1, recently, strict proof is not required for this; but rather, it is more appropriate to give credence to the woman's declaration, because it is supported by testimony. 2. Because it is not presumed that the woman wishes to harm the reputation of her husband, and to deprive herself of marital rights without a serious cause; *Rota* cited above. Furthermore, whenever...

[*Latin ed. p. 190*]

190. VARSOVIA. A husband unjustly finds that his wife, through frequent, albeit not severe, acts of cruelty, is sufficient reason for the woman to permanently separate from her husband. The *Consilia de separatis*, book 2, chapter 6, number 25, states: "If a husband, without just cause, or frequently and mildly, ill-treats his wife, those who are deceived by a false argument are clearly mistaken, who believe that such ill-treatment, if it is not the most atrocious, is not to be considered as grounds for separation, except for some other reason, than that it is permissible for a husband to mildly correct his wife in order that she may be reformed. For, when a just cause is present, the necessity of correction ceases, and reformation is not to be hoped for from a correction of an error or fault not committed; therefore, in this case, whether the ill-treatment is mild or severe, all reasons suggest that separation is justified." This is in accordance with the decision of the Rota, number 248, number 9, part 6, of the *Recentiores*. Furthermore, the atrocity of the acts of cruelty is increased if they are accompanied by injuries, even verbal ones, which carry with them a certain defamation, and which are sufficient to disturb the most gentle nature of a virtuous and pious woman. Such injuries have been recounted by several witnesses. Nor are there lacking Doctors who equate defamation with the danger of life, and consider it a just cause for separation, as stated by Cyriacus in *Controversiae*, 172, number 13. The *Consilia de separatis*, book 2, chapter 10, and also the Rota in *Romana*, in the *Separationes*, of June 4, 1836, § 13, before Cuniliach. In addition to all of this, there is another very serious cause for separation: adultery. Although the Church holds that marriage, once validly and consummately contracted, cannot be dissolved by any cause, even adultery, as regards the bond itself, it nevertheless admits that it can be dissolved as regards the marriage bed and cohabitation. The legitimate cause for this dissolution or separation is undoubtedly adultery; and the reason is given by St. Thomas in the *Summa Theologica*, 4 Sententiae, distinction 25, question 1, article 1: "The husband is permitted to dismiss his wife for adultery, as a punishment for him who has broken the bond of faith, and for the benefit of him who has preserved it, so that he is not bound to render to him what is due to him who has not preserved the faith."

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As regards divorce or separation...

[*Latin ed. p. 191*]

WARSAW. The condition of both spouses in the case of adultery is equal. The Church, in this matter, does not recognize a difference between the man and the woman, as can be demonstrated by many authorities, as stated by Ferraris, *verb. adulterium*, no. 15. Furthermore, Saint Jerome teaches that the cause for granting a divorce is not only based on actual adultery, but also on the suspicion of adultery, stating, "Everywhere there is fornication, or the suspicion of fornication, the wife is dismissed," and he states that suspicion is sufficient in chapter 2. Saint Thomas Aquinas, *Summa Theologica*, quaest. 1, caus. 32. However, the Sacred Roman Rota does not seem to disagree with this doctrine, as evidenced in decision 337, no. 4 and 18, part 12, recent, and in decision 818, part 18, volume 2, recent. - There, it is stated - "This does not concern adulteries committed criminally in order to inflict punishment on the adulterer, but only the separation of the spouses, in which case, although the matter may be considered serious and difficult, nevertheless, all Doctors agree that even lighter proofs are sufficient." Furthermore, the law concerning adultery admits proofs through conjectures, presumptions, and circumstantial evidence, as stated by Farina, *de testibus*, quaest. 64, no. 229, Busatt, *Consilia*, 218, no. 1, Menoch, *Consilia*, 31, no. 18, Cyriacus, *Controversae*, 281, no. 26, according to the text in chapter 12, *De Praesumptione*. Indeed, the matter concerns not a simple suspicion, but a violent suspicion that has moral certainty, as when it is discovered through witnesses, and which has already led to the condemnation of the guilty spouse in the first instance, as the sentence itself indicates: "Because these witnesses testify to such circumstances and actions, which, when considered together, create a strong suspicion against the accused of violating the marital bond." And it should be noted that the witnesses presented by the husband in the aforementioned counter-suit do not diminish the validity of these depositions; on the contrary, they constitute negative proof, since, when questioned, they stated that they knew nothing about the husband's treatment of his wife. Finally, Francisca insists most strongly on the third cause, namely, that the husband squanders his patrimony and his wife's dowry.

[*Latin ed. p. 192*]

192 WARSAW. This is the case; so that she can easily be reduced to extreme poverty: for she laments in a distressing letter sent to the Most Reverend Ordinary that "The decree of the second instance has, once again, imposed upon the husband's hands a sword, by which – he can kill me and my children through prodigality." Indeed, according to the *Clericatus* concerning the Holy Matrimony, decree 39, number 18, and Cardinal De Luca, *Disputationes*, 42, number 272, dilapidation and dissipation of

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goods are considered acts of cruelty – and there – "It seems to be reducible to cruelty, if the spouse wishes to dissipate all or the greater part of the goods, and actually begins to do so, for this is a grave burden for the innocent, which is not easily tolerated." The *Clericatus* approves of this opinion, but adds that among other Doctors, such a form of cruelty is not found, although it is very common in practice. The wife did not believe that her husband would abandon his bad behavior, having been taught by the constant experience of many years, and by the inflexible nature of the man, which makes him incorrigible. Furthermore, it was noted that the vote of the Archbishop, who fully favors the wife, was of great importance. Therefore, from all of this, it seems easy to conclude that the judgment of the Judge of Lublin should be overturned. DEFENSE OF THE HUSBAND. It was noted that the cause of all the contention and dispute arose from the inheritance of 40,000 rubles, which had come to his wife. With this inheritance added, she began to become arrogant due to the magnitude of her wealth, and, abandoning the family home, she chose to reside in Warsaw under the pretext of educating her children, to the great expense of her husband and the family affairs. Having stated these things regarding the history of the facts, not a single word is made regarding the accusation of adultery, with which the wife strives with all her might to obtain a separation. And regarding this, five witnesses were brought forward. Nor did she present any specific refutation of the harsh treatments and cruelties, about which the aforementioned witnesses spoke. The witnesses brought forward by him testified that he was a hardworking father.

[*Latin ed. p. 193*]

WARSAW. 193 thousand [rubles] and enjoys the reputation of a virtuous man. He, however, asserted that the blame for the separation should be attributed to the ignorance of his own defender, and to the instigation and cooperation of individuals holding higher offices, who, according to the Warsaw Consistory, had decided to grant the divorce. He maintained, however, that the accusation of prodigality was unfounded, and that the misuse of his wife's property was due to the power granted to the husband by Polish law to administer his wife's assets. He further argued that this accusation was of little consequence, because in the civil court proceedings, he had renounced his right to administer both the patrimonial and his wife's assets, as stipulated in a settlement agreement signed on March 10, 1883, whereby the wife granted a mortgage of 8,000 rubles to each of her daughters. Furthermore, he stated that his wife's dowry and 40,000 rubles were secured by a mortgage. He also claimed that he had been forced to sell his house due to the expenses of the legal proceedings, and due to the care of the illness of paralysis from which he suffered. Therefore, he argued, the accusation of squandering the patrimony and his wife's dowry was without merit. He also pointed out that for a divorce to be granted, there

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must be a just and legitimate cause, such as acts of cruelty, or implacable hatred, or some other grave offense, from which the spouses' feelings are so inflamed that the life of one is put in grave and imminent danger. Therefore, if acts of cruelty are cited as the reason, it must be considered what acts are to be considered cruel, "for," as the Rota Decis. 39, no. 12, recently stated, "any cruelty is not sufficient, but only those that result from several and repeated acts, and indeed atrocious acts, so that neither several moderate acts nor one extremely atrocious act is sufficient." The same was defined in Dec. 412, no. 6, before Bichio in Valencia, Separ. Tori, February 12, 1752, § 5, before Eléphant, as well as in H. S. C. in Melevitana, Separ. Tori, September 3, 1825, §, and in Firmana, Obse>q. matr., November 18, 1826, §. However, if implacable hatred between the spouses is alleged, the...

[*Latin ed. p. 194*]

194 VARSOVIA. It must be carefully examined and thoroughly proven whether this hatred truly exists between the spouses, and from what reason it arises, whether it is destined to last perpetually, and whether there is any hope of reconciliation. However, if the matter concerns acts of cruelty, of which the husband is accused by his wife, he demonstrates that these do not constitute a legitimate cause for separation. Indeed, they are not fully and conclusively proven; since, from the testimony of the witnesses, one or the other only mentioned such things once, and, as the Judge of Lublin states in his judgment, they stemmed rather from the husband's hasty nature, and not from a malicious disposition or hatred towards his wife, nor did they constitute a long-lasting and continuous series of injurious acts threatening her peace or health. Secondly, because the acts that are reported are of such a nature that they cannot be entirely classified as acts of cruelty. These are minor and fleeting actions, which may have arisen from an initial impulse or anger, due to the wife's fault or disobedience; hence, they are not suitable to establish the necessary habit of cruelty required for the separation of the spouses. Thus, the Rota holds in the cited *Signina, Separatio, 4 Iunii 1790, § 5, coram Malvasia*. The same holds true regarding injurious words. Indeed, it says, such a situation would occur in almost all marriages, if spouses were to be separated because of harmless and somewhat uncivil words, contrary to the disposition of the text in chapter [omitted]. Furthermore, contrary to the warning of the Rota in *Carpen, Separatio, 23 Iunii 1781, § 4, coram de Baesane, et S. Congregationis*, which in this case rejected the petition for separation, as can be seen in *Firmana, Separatio, 16 Maii 1789*. Regarding the suspicion of adultery indicated by the witnesses, even in strict consideration, these circumstances do not constitute a presumption against the husband of this crime; especially because in the wife's letters to her husband, written at that time, there is no indication of such a suspicion of adultery with the person indicated by the witnesses. Hence, such a cause

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for separation, due to adultery, is...

[*Latin ed. p. 195*]

WARSAW. The fact that the husband vehemently denies [the wife's claims] seems not to be a matter to be considered. However, negligence in managing and conducting the affairs of the family, after the husband's confession, cannot in any way be included among the legitimate causes for separation; especially since a legal remedy has already been provided to her through a settlement made on March 10, 1883. It is also important to note that the judge of Lublin based his judgment on these points: namely, that the insulting words of the husband towards his wife did not arise from hatred, but from a hasty disposition; that, while there is no evidence of the duration of the insults, the letters presented by the wife, written by the defendant to her in various respects, indicate a peaceful and customary life between the spouses; and that the circumstances indicated by the witnesses do not sufficiently prove the husband's adultery, especially when compared with the aforementioned letters of the woman. With these points noted, the purpose is to determine whether the judgment of the Court of Lublin should be upheld or overturned in this case. RESOLUTION. After careful consideration, the Sacred Congregation decided on June 14, 1884, to respond: The judgment should be upheld. FROM WHICH ONE MAY GATHER: I. In the ecclesiastical forum, causes for separation are admitted only if they are very serious and are proven by all the evidence: because nothing is more abhorrent to justice, and more harmful to the common good, than to dissolve the unity of marriage, which has been approved by both divine and human reason. II. To obtain a just and legitimate separation, a cause must be present that is of significant importance, such as implacable hatred, serious cruelty, or something else of a grave nature, from which it can be argued that the life of one of the spouses is in imminent danger. III. Adultery, formally proven, is a legitimate cause for separation; for "The Lord hath permitted that the man may put away his wife, if she be unclothed."

[*Latin ed. p. 196*]

196 WARSAW. He broke faith, and acted in favor of him who preserved [his rights], so that he should not be bound to repay the debt to him who did not preserve faith. IV. However, grave severities ought to be, and those which result from many and repeated acts; and if hatred truly exists between spouses, such [severities] ought to be, so that no hope of reconciliation shines forth. V. The motives for obtaining a separation, presented by the woman, were not seen to be sufficiently proven by the Most Reverend Fathers; therefore, they confirmed the judgment of the Bishop of Lublin. ARETINA PARISH RENUNCIATION. On June 14, 1884, Anthony Parrini, who obtained the parish church of the town of Poppi, in the Diocese

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of Arezzo, in the year 1852, diligently and constantly devoted himself to increasing the fruits of the same parish. The result of his diligent efforts was that the ancient revenue of 1,176 florins was increased to the annual sum of 4,483 florins. However, this diligence, in defending the rights of his parish, seemed to some to be excessively great. Hence, various troubles were brought upon the pastor. Indeed, he was brought to trial several times for political reasons, three times he was trapped by snares prepared for him, although unjustly, and he received a serious wound during the day, in a frequented place, and before many people. The pastor, who was already 60 years old, petitioned the Apostolic See, so that he might be dispensed from his residence, both because of the troubles and because of the harshness of the climate. A dispensation for two years was granted; but, since the hatreds continued to rage, he declared that he was prepared to relinquish the parish, provided that a pension be reserved for him from the revenues of the benefice. SUMMARY OF THE FACTS.

[*Latin ed. p. 197*]

ARETINA §97. Being asked about the custom of the Bishop, he replied: that the benefit comes from the speaker [i.e., the one making the request], even if not all the revenues have been increased by the parish priest; that his ministry would be utterly diminished and rendered completely useless; which could have been avoided by acting prudently, as befits a pastor to whom the spiritual well-being of his flock is dear; that the burdens of the parish are so heavy that, if a pension of two thousand livres were granted to the speaker, who wishes to live away from worldly affairs, scarcely so much would remain for the new parish priest, to whom the weight of the day and the constant demands remain, besides the burden of two chaplains.

SYNOPTIC DISCUSSION: THE PENSION APPEARS TO BE GRANTABLE.

From the things mentioned above, it is clear that the resignation proposed by the parish priest should certainly be accepted. Since legitimate reasons are present, by which, according to Innocent III in Chapter 10 on Resignations, a Bishop may be granted permission to resign, and these reasons should, a fortiori, be valid also for parish priests, as both sound reason and the tenor of the Constitution of Pius V, *Quanta Ecclesiae*, teach; De Angelis in *Praelectiones Juris Canonici*, book 1, title 9, number 3.

First of all, there is the weakness of the body, as is evident from the deposition of the parish priest himself, who states that during the cold season he suffers such discomforts that they rarely allow him to leave the house; so that, unless he were granted a private dispensation, he would not be able to say Mass more than a few times. Nor is it permissible for

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him to visit the sick at night, because his eyesight is poor. Moreover, as the strength of the body diminishes with the passage of years, the daily labors increase due to the lack of priests who can perform the duties of chaplains.

Furthermore, there is the hatred of the people; as is clearly indicated by the more serious actions taken against the parish priest, confirmed by the testimony of the ordinary. Such animosities, the Bishop considered, are likely to be lasting.

Therefore, in such a case, not only should resignation be granted, but it should also be encouraged and even urged upon the parish priest.

[*Latin ed. p. 198*]

198. The law concerning the transfer of a parish priest is explained by Fagnanus in *Lib. 3 Decret.*, Cap. *Clericos 17 de Cleric. non resid.*, n. 27: "Where, indeed, the circumstances of the city are such that they are likely to endure, so that the care of souls may be consulted, the parish priest ought to be induced to resign or to be transferred," as is stated in Cap. *Ad supplicationem de r enuntiat.* Thus, the Sacred Congregation of the Council has also consistently taught this, as can be seen in *Militen.* of October 15, 1644; in *Alerien.* of July 10, 1757; in *Derthonen. Reintegrationis in Paroecia* of July 20, 1878; and in the most recent document from *Albiensis* of September 1, 1883. Since, however, in such a case the parish priest is punished, although not without cause, yet without fault, as noted in the Glossa in Cap. *Tua nos in vers. Administrationis de Cler. aegrot.*; therefore, the Sacred Congregation of the Council has customarily reserved for him a suitable pension from the fruits of the benefice he has resigned, so that his honest sustenance may be provided for, as is evident from six hundred decisions, and especially from the aforementioned document from *Albiensis* of September 1, 1883. (1) In this case, indeed, the parish priest, having lost the esteem and trust of his parishioners, and having aroused their indignation against him, and therefore having been suspended by his own Archbishop; the matter was brought before the Sacred Congregation, and the question was proposed: "Whether the sentence of the archiepiscopal court of Albi, of June 18, 1882, should be confirmed or annulled in this case," the Sacred Congregation decided: "It is deferred, and it is the opinion that the Archbishop should induce the parish priest to transfer to another parish, or to exchange with another benefice of approximately equivalent value, or to relinquish it with the assignment of an equal pension." Therefore, the requested pension seems to be granted to the parish priest in this case, all the more so because the burden of caring for the souls of another parish has become burdensome to him, both because of his infirmity and because of his advanced age. Whether this pension should equal half of the fruits, as the parish priest requested, was considered, and it was noted that it is not a new thing in law for a pension to be reserved until the [parish

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priest] reaches the age of [sixty years].

[*Latin ed. p. 199*]

ARETINA 199, concerning the benefits of fruits, as taught by Ferraris in *Biblioth. Can.*, vol. 5, no. 103 – there – "Sometimes, however, a pension" is reserved up to half of the fruits, *Rota*, part 19, vol. 1, decision 379, no. 13. And indeed, according to the style of the *Datariae*, benefits are usually burdened with a pension amounting to half of the fruits, *Rota*, part 4, vol. 3, decision 536, no. 6. And with regard to the pension that is reserved on the fruits of the parochial Church, in the case of resignation, it is advisable to refer to what Pyrrus Corradus states in *Praxi benef.*, book 5, chapter 1, where, after noting in no. 26 that for the parish priest there should be a suitable sum of 100 ducats, he continues in the following no. 27: "But if the fruits of the parochial Church exceed the aforementioned one hundred ducats, it is customary to establish a pension on those fruits for the amount that exceeds said sum." All of these considerations should have greater weight in this case, because the parish priest of Parrini quadrupled the fruits of the parish and newly built the parochial house at his own expense. Therefore, it seems just that, in the case of Parrini, a more generous pension should be granted, since he has benefited his Church so well. It cannot be permitted that those who turn their affairs to the good of the Church itself should be in a worse condition than those who use them for their own advantage and to satisfy their pleasures. Finally, the parish priest of Parrini denies that he received subsidies, either from the heirs of his predecessor or from the Government, in order to carry out all of the aforementioned goods. THE PENSION SEEMS TO BE DENIED. On the other hand, it does not seem advisable to admit the resignation from the parish, according to the style of the Sacred Congregation, which, in the matter of enmities, is explained by Fagnano in *Cap. Clericos*, book 3, decrees concerning the clergy, no. 25 and 26 – there – "And frequently, the Sacred Congregation has responded in this manner, and in these cases, it is customary to issue letters to the Bishop, so that, if the enmities narrated are true and serious, and if they arose without the fault of the parish priest, and before he obtained the Church…"

[*Latin ed. p. 200*]

200. ARETINA: Quibus Episcopi conscientia oneratur, dilationem ei det, ut in alio tutiori ac viciniori loco manere possit, durantibus dumtaxat inimicitiis, dum tamen non ultra sex menses durent. Interea autem Vicarium idoneum in illa Ecclesia constituat Episcopus, assignata ei congrua portione ex reditibus Ecclesiae: et partes etiam suas interponat, et omnem diligentiam adhibeat, ut tuto possit residere Parochus. Quod si intra sex menses nedum sedatae sint inimicitiae, rescribit Episcopo, ut det, illi sex mensium prorogationem repetitis omnibus, quae in

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prioribus capitulis continebantur, et sine spe ulterioris prorogationis, quae rarissime conceditur: nam cum indulta perpetua de non residendo etiam ex iustis et rationabilibus causis iam sublata fuerint Decreto Cap. 2 Sess. 6, ubi inimicitiae sunt verosimiliter duraturae etc. » Ex hisce vero apparet quod S. C. Congregatio antequam Parochis concedat facultatem dimittendi Paroeciam iugiter experire solet "iuris remedia superius a Fagnano relata. Porro in themate praeprimis obiter animadverti potest: Parochum quoad exortas inimicitias culpae expertem prorsus non esse. Episcopus enim deposuit, parochum Parrini inconsulto zelo nimium se ferre ita, ut si prudentius ageret omnia cessarent dissidia. In alia autem relatione asserens Episcopus veritatem excidii ex ruina cuiusdam muri ob Municipii incuriam, statim subiunxit: « tamen post factum desiderandum erat lites et iurgia non augeri, in tanta temporum nequitia, et vulnus receptum vitare potuerat (Parochus). Ex hac re crevit timor in Parocho, et irae in populo accensae fuerunt. > Parochus enim, occasione instaurationis huius muri, Municipium in ius rapuit ob reparationem quorumdam damnorum^ ex quo lites et irae magis magisque excrevisse videntur. Concludendum igitur videtur, graves inimicitias nec absque culpa Parochi, nec antequam Ecclesiam obtinuerit exortas fuisse. Praeterea animadversum fuit, Parochum a tempore, quo indultum abessendi a S. C. C. obtinuit, numquam deputasse idoneum Vicarium, qui partes interponere et omnem diligentiam adhibere debuisset, ut inimicitias contra Parochum.

200. In cases where the conscience of a Bishop is burdened, he should grant an extension of time, so that the priest may remain in a safer and more convenient location, provided only that the animosities last, but not for more than six months. Meanwhile, the Bishop should appoint a suitable Vicar in that parish, assigning him a proper portion of the parish revenues; and the Bishop should also intercede and exercise all diligence, so that the priest may safely reside there. If, within six months, the animosities have not subsided, he should write to the Bishop, requesting a further extension of six months, with all the conditions previously mentioned, and without any hope of a further extension, which is rarely granted: for, as stated in Decree Cap. 2 Sess. 6, perpetual dispensation from residence may be revoked even for just and reasonable causes, where animosities are likely to persist, etc. » From these things, it is clear that the Sacred Congregation, before granting a priest the faculty to leave the parish permanently, usually carefully examines the "remedies of the law," as related above by Fagnano. Furthermore, in the aforementioned matter, it can be noted that the priest is not entirely blameless regarding the arising of animosities. The Bishop stated that he dismissed the priest because of Parrini's excessive zeal, so that, if he had acted more prudently, all dissensions would have ceased. In another account, the Bishop, stating the truth about the damage caused by the collapse of a wall due to the negligence of the municipality,

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immediately added: "However, after the event, it was desirable that disputes and quarrels not be increased, and that the wound received could have been avoided (by the priest)." From this, fear grew in the priest, and anger was inflamed in the people. > The priest, on the occasion of the restoration of this wall, brought the municipality to court for the repair of certain damages, from which disputes and anger seem to have increased more and more. Therefore, it seems that serious animosities were neither entirely without the priest's fault, nor did they arise before he obtained the parish. Furthermore, it was noted that the priest, from the time he obtained the dispensation to leave the parish from the Sacred Congregation, never appointed a suitable Vicar, who should have interceded and exercised all diligence to prevent animosities against the priest.

[*Latin ed. p. 201*]

ARETINA 20 exortations to appease. But if no priest was found to undertake the care of souls, the negligence of the Parish Priest must be attributed; who, according to the testimony of the Ordinary, utterly refused to assign a suitable Vicar a fitting portion of the fruits [of the parish]. And one cannot be surprised that, while the Parish Priest, living as a prince in the city of the Diocese, received the entire fruits of the parish into his own custody, the faithful, trusting in his conscience, were deprived of all the benefits of a priest, unless the Superior had assigned the burden of attending to the urgent needs of the people to a neighboring Parish Priest. Hence, the anger of the people grew more intense, to whom ordinary assistance from a pastor was lacking. Moreover, if the Parish Priest appointed his substitute later, namely after the unction and admonition given to him by the Sacred Congregation regarding the return to the parish, and further proceedings against him, according to the law, this seems insufficient to excuse the Parish Priest, so that the requested resignation may be granted to him; but rather, it seems that his requests should be rejected, especially due to the lack of priests. It seems superfluous here to speak of the Parish Priest's poor health and old age, since the Sacred Congregation declared on April 6, 1647: "Neither old age nor poor health excuses the Parish Priest from personal residence;" Lib. 18 Decr. 329, and Benedict XIV, Inst. Eccles. 17, no. 14. Nevertheless, even if it is desired to grant the requested resignation from the parish, the things reported by the Bishop in the matter itself must be considered, as well as in other reports, in order to ascertain whether the Parish Priest should be granted the pension desired by him. With these premises, the purpose was to clarify the question of whether and how to respond to the request of the Parish Priest. RESOLUTION. The Sacred Congregation, having considered the matter on June 14, 1884, decided to

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respond: Regarding the resignation from the parish with reservation...

[*Latin ed. p. 202*]

202 ARETINA, concerning the granting of pensions, a letter was written to the Most Holy [Pope], from which the following may be gathered:

I. It is the custom of the Sacred Congregation of Councils to examine the remedies before granting to pastors the faculty of leaving their parishes; so that, even if enmities constitute a legitimate cause for resignation, they must nevertheless be proven to be true, grave, and arising without the pastor's fault, and before the Church has suffered harm.

II. The consciences of Bishops should be burdened with this: that a pastor, whom a wicked people hates, may be granted, for a time, to remain elsewhere, until, with all diligence applied, it is certain that the pastor cannot safely reside there, and that the enmities are likely to endure; so that the faculty of resigning may be granted to him.

III. For it is established by law that there must be a legitimate cause for any resignation; because the greatest detriment would befall the Church if any beneficiary, especially one with the care of souls, could leave without a legitimate reason, admitted and approved by a superior.

IV. Pensions are established whenever there exists a just and legitimate cause: such as, for example, for a distinguished cleric's merit in the Church, for excellent virtue, for great skill in doctrine, for old age, for illness, or for another pious reason.

V. It appears that the strictness of the law in this matter has been tempered by the great benevolence of the Apostolic See, in the case of the aforementioned [person]; whose principal merit in the Church seems to be that the fruits of the parish, through his persistent labors, have wonderfully increased; and concerning which he has now brought great benefit.

[*Latin ed. p. 203*]

203 ZAMORA. DISPENSATION REGARDING DEFECT OF BIRTH. June 14, 1884. SUMMARY OF THE CASE. Joseph, of the Diocese of Zamora in Spain, born of an adulterous and incestuous union between Joseph and Rosalia, his wife's sister, desiring to embrace the clerical state, requested a dispensation from the impediment of birth, so that he might be admitted to the sacred Orders and to ecclesiastical benefices. The Bishop also recommended these requests. SYNOPTIC DISCUSSION. THE GRACE APPEARS TO BE DENIABLE. It has been objected against the granting of such a grace that those who are illegitimate should not be promoted to the sacred Orders, as is decreed in Chapter 1 concerning the sons of priests, whether they should or should not be admitted, where it is expressly stated: "That the sons of priests, and others born of fornication, should not be promoted to the sacred Orders." And this is most fitting for three reasons, as the Doctors after the Gloss teach in Chapter 6 at the

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end concerning the sons of priests. The first reason is drawn from the prerogative or dignity of the Order; as St. Thomas states in IV Sentences, Distinct. 25, article 11, question 3: "Those who are ordained are constituted in a certain dignity above others..." And because the clarity of a man is obscured by a "vicious origin, therefore those born of an illegitimate union are repelled from the reception of Orders." The second reason was expressed long ago in his most learned preface by St. Ivo of Chartres, who says: "Indeed, the Roman Pontiffs have decreed that the sons of priests should not be admitted to the priesthood, not because the reception of persons with God is of any importance; or because of nature, which..."

[*Latin ed. p. 204*]

204 ZAMOREN. "Omnium est mater, et nemo potest eum reprehendere, nec filius pro iniquitate patris damnari potest... Sed ad reprimendam incontinentiam aliorum presbyterorum, vel ad defendendam continentiam aliorum, hoc est utile. Tertia ratio est timor incontinentiae in filio, sicut vulgo dicitur: Saepe filius similis est patri. Hanc rationem utitur Sixtus V in Constitutione contra illegitimos, cap. 1, in verbis: "Illegitimati, qui plerique parentum vitia et incontinentiam imitari solent, etc." Quod si dispensatione aliquando irregularitas tollitur, tamen, ut notat Sanctus Thomas in loco citato, "tanto est difficilior dispensatio, quanto origo est turpior," quod etiam non obscure expressit Innocentius III in cap. 10 de renuntiatione. Cum igitur ex duplici capite turpissima videatur origo Iosephi, utpote qui genitus fuit ex adulterio et incestu, videtur prudenter non posse accipi eiusdem preces. Duplici enim impedimento ligabantur parentes Iosephi tempore copulae, nec ullo iure matrimonium inter ipsos consistere poterat. GRATIA INDULGENDA VIDETUR. Ex altera vero parte, sciri debet quod Sanctissimus Pontifex saepius concedit dispensationem super defectu natalium, quando constat de oratoris vitae honestate, ingenio, et de Ecclesiae utilitate, et praesertim necessitate. Porro haec omnia adesse in hoc casu testatur Episcopus, ita scribens: "Cum vera sint omnia ab exponente enarrata, tam relativa ad irregularitatem ex defectu natalium, cuius dispensationem cupit, quam ad bonam animi dispositionem ad statum sacerdotalem amplectendum, et numerus clericorum in hac Dioecesi existentium de die in diem minuitur, mihi videtur dignum esse, ut ei dispensationem ab irregularitate supradicta concedatur." Nec desunt exempla harum dispensationum; ita, exempli gratia, Sacra Congregatio in Brixia, die 9 Septembris 1882, dispensationem largita est clerico ex sacrilega unione genito (1), et

(1) Habes eiusmodi quaestionem in Vol. X V, pag. 452.

[*Latin ed. p. 205*]

ZAMOREN. On January 19, 1884, in the most recent Gratianopolitan collection, number 205, the same grace was granted to a cleric born of a lawful and free union (1). Given these premises, the question arose as to

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how the petitioner's requests should be considered. RESOLUTION. The Sacred Congregation, having considered the matter, decided on June 1, 1884, to respond as follows: "Considering, etc. Provided that there is no scandal, and that the Bishop's conscience is not burdened, the grace, up to and including the priesthood, may be granted, if he so declares."

NUSCO: REQUEST REGARDING THE ACCEPTANCE OF THE DOCTORAL DEGREE FOR THE FIRST DIGNITY OF COLLEGIATE CHURCHES. On July 12, 1884. SUMMARY OF THE CASE. The Bishop of Nusco, in a report on the status of his Church, explained that in the Papal Bulls granting the benefit of the first dignity, that is, the Archdeaconate in the Collegiate Church, a clause is included: "Within one year, you are required to accept the doctoral degree." However, since the Sacred Congregation, in several resolutions, has stated that when the dignity does not involve the care of souls, or the administration of justice, but is merely a privilege of honor, it is not required to accept the doctoral degree, and nevertheless, the aforementioned clause is always included in the Bulls; the Bishop sought to remove the doubt that is renewed in every grant of the first dignity without jurisdiction in the Curia, regarding the obligation (1).

(1) This question is found in Volume XVI, page 461.

[*Latin ed. p. 206*]

206. In NUSCO, the holder of a doctorate requested an authentic response from the Sacred Congregation regarding the validity and effect of the clause customarily appended by the Apostolic Chancery. The Sacred Congregation inquired of the Bishop whether anything was stipulated in the statutes concerning the obligation to accept the doctorate, and what the observance was. The Episcopal Curia reported that only a few documents remained in the Archive from which it could be gathered that, in the Diocese of NUSCO, besides the Chapter of the cathedral church, there were three collegiate Chapters: the first, commonly called di Montemarano, formerly a cathedral; the second, di Montella; and the third, di Bagnoli. Regarding the Chapter of the cathedral, nothing was found in the statutes that could be affirmed concerning the obligation to accept the doctorate of the highest dignity. This is indicated by a certain diocesan synod held in the year 1748; for, speaking of the Archdeacon, it refers to common law established by the Council of Trent, Session 24, chapter 12, concerning reforms. However, the present Archdeacon, as well as more recent predecessors, are found to possess the doctoral title; but this cannot be affirmed of those more remote in time, due to the lack of documents. Nor was anything certain found concerning the law of the Chapter of Montemarano. Nevertheless, it seems to be supported by a solid foundation that the Archdeaconate was conferred according to the form of common law. As for the observance, it is certain that the present Archdeacon has been dispensed by the Sacred

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Congregation from receiving the doctorate, after having been declared suitable for the office by the Ordinary. A predecessor was also adorned with the doctoral title, as he was previously a Canon Theologian. Regarding the others, no certain rule can be assigned.

[*Latin ed. p. 207*]

207. The College of Montella was established by a Bull of Leo X, in which no mention is made of the obligation of obtaining a doctorate. And in this sense, namely, without obligation, it has always been interpreted by the Chapter. But at present, the first dignity is not conferred by an Apostolic Datum, therefore the opportunity and the basis for doubt are lacking. Finally, the Collegiate Church of Bagnoli knows its institution from a Bull of Pius X, in which the obligation of obtaining a doctorate for the first dignity is expressly stated. But this Bull has not yet achieved full execution due to not a few circumstances.

Synopsis of the Discussion.

IN FAVOR OF THE DOCTORATE: It has been observed that the Council of Trent did not impose the obligation for the first dignity in every Church to obtain a doctoral degree: "Archdeacons also, who are said to be the eyes of the Bishop, are in all Churches, where it can be done, Masters in Theology, or Doctors, or Licentiates in Canon Law." (Session 24, De Reformatione, cap. 12). Therefore, the Apostolic Datum rightly adds that clause in the Bulls of collation, which must be observed, especially if, as in the present case, some observance has already been established, as can be seen from the report of the Curia.

AGAINST THE DOCTORATE: It has been observed that Doctors now hold the Decree or clause that is added in the Bulls of provision, "Within one year, etc.," rather as a matter of style of the writers, than from the will of the Prince, because the Council of Trent speaks of those Archdeacons who perform those duties which formerly were exercised by common right; therefore, if they do not have care of souls, nor do they exercise actual jurisdiction, they are not called the eyes of the Bishop, nor are they included in the decree of Trent. (Moncelli, Supplementum, ad cap. 1).

[*Latin ed. p. 208*]

NUSCANA, volume number 212; Barbosa, cited above, concerning the Council, Session XXVI, chapter 12, numbers 5 and 6. Gronzales, on benefices, page 7, chapter 7, number 41. Therefore, that clause in the Caurien, as if it were empty and rejected by the Holy Office, is to be disregarded. The following dates are given: May 20, 1589, in Sulmona; June, 1681, in Lavallen; May 26, 1594; January 12, 1697; February 16, 1704, apud Monacelli Zoe, cited. Nor can anything be imposed by force of custom, since this custom is uncertain and ambiguous; indeed, it rather appears to be excluded by the evidence. Having considered these

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matters, the question was raised as to what answer should be given to the Bishop who inquired. RESOLUTION. The Sacred Congregation, having knowledge of the matter, on June 1, 1884, decided to respond: With regard to the collegiate church, commonly called Bagnoli, the Apostolic letters of the Most Holy Pope Pius IX should be followed. However, concerning the cathedral and other collegiate churches, and the doctoral laurea, which lack all care and jurisdiction concerning dignities, they are not required by law.

[*Latin ed. p. 209*]

209 APOSTOLIC LETTERS OF THE MOST HOLY POPE LEO XIII, concerning the restoration of the Archiepiscopal See of Carthage. LEO, BISHOP, SERVANT OF THE SERVANTS OF GOD, FOR THE PERPETUAL REMEMBRANCE. The charity of the Materna Church, although equally diffused among all peoples and wonderfully concerned for every nation, nevertheless, is wont to regard with a special sense of mercy those who have been drawn away, either by force or by error, from the embrace of the Gospel. For nothing is more grievous than for those who were once illuminated by the most brilliant gift and grace of God, to be blinded by the returning darkness of superstition; and nothing is more wretched than for those who have once been vindicated to salvation, to fall back into ruin. But, according to the mysterious plan of God, this calamity, as it has afflicted many other lands, has also struck Africa Romana, when the wisdom of Christianity, maturely known and received by the Africans, was violently extinguished by the waves of great tempests. In this, besides the exceedingly mournful fortune of Carthage: this city, which was not less renowned among Christians than for its military and civil glories, was utterly destroyed by calamitous vicissitudes and its own ruins. These things cause us, mindful of our apostolic office, to contemplate with paternal piety, at this time, the shores of Africa, which are situated nearby. And since we see that the Catholic name is already sufficiently reviving in that region, we desire that that good seed, which promises abundant fruit, may take deeper roots daily through our care and cultivation, and may flourish well, with God's help. Wherefore, since it is of the utmost importance for the stability and order of sacred things that each Christian society have its own bishops, and that these bishops have their own proper sees, we have considered, with regard to the state of the African Church, that the Archiepiscopal See of Carthage ought to be restored, the Apostolic administration being removed. In this matter, it is fitting to recall something of the former splendor of that Church, and to draw hope for the future from the memory of past things. Indeed, it is clear that the African Church originated from Rome, since it is traditionally handed down from

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ancient times, Acts, Vol. XVII, page CXCVII, 14.

[*Latin ed. p. 210*]

210 APOSTOLIC LETTERS: If not the most blessed Peter, certainly his immediate successors brought the Gospel to Africa. Among them, the name of Christian was quickly established: for, before the end of the first century, with boundaries defined and bishops duly appointed, many churches were established throughout Africa. And it may be inferred that these churches flourished, since, before the end of the second century, the Catholic Church received a Pope from Africa, namely Saint Victor, who, having governed the Christian republic for a decade, died a martyr. — But after a short interval, there was a considerable number of wise men and great men: we know of Cyprian, Tertullian, Aurelius, Evodius, Pothinus, and he who illuminated not only Africa but the entire Christian republic, Augustine. There is no doubt that Carthage excelled from the very beginnings of the African Church. For it was fitting that the bishops of this city should have sought to excel others in authority, and that the Church of Carthage, as Augustine states (1), should be called the head of Africa. Indeed, the authority of the bishops of Carthage over Africa was so great that they were accustomed to inquire into the causes of matters concerning the churches; also, to give answers to bishops, to send legates to the Emperor, and to convene councils of all the provinces. In this regard, it is honorable and significant to recall the testimony of our predecessor, Saint Leo IX, who, when asked for his opinion on the right of the Archbishopric of Carthage, wrote to Thomas, the Bishop, as follows: "Without a doubt, after the Roman Pontiff, the first Archbishop and the greatest metropolitan of all Africa is the Bishop of Carthage; and he cannot lose the privilege once granted to him by the Holy Roman and Apostolic See for any reason, but he will retain it until the end of time, and until the name of our Lord Jesus Christ is invoked in it, whether Carthage lies deserted or rises again in glory." This is from the council of the martyr Cyprian; this is from the Synods of Aurelius; this is from all the African councils; this, and what is more, is clearly demonstrated by the decrees of our venerable predecessors, the Roman Pontiffs. — But Carthage excelled not only in dignity, but also in examples of Christian virtues, and especially of fortitude. For, if the city of Rome is excepted, scarcely another city can be found which has produced so many martyrs and so many illustrious men for the Church and for Heaven. Perpetua and Felicitas, two women of the highest nobility, flourished there above all others, and their victory was all the more remarkable, inasmuch as they endured prolonged and grievous torments. (1) Epist. XLIII, no. 17.

[*Latin ed. p. 211*]

The Apostolic Letters number 211. No less famous is the name of

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Cyprian of Palmanova. For having long honored the name of Carthage with his sanctity and deeds, and having distinguished himself in style and letters as a Christian, he died with the most illustrious confession in the midst of his own Church, before those whom he himself had prepared for martyrdom, freely shedding his blood for Christ. And it is also worthy of remembrance that the Church of Carthage commends itself not a little, because it was customary for African bishops to be convened there by the Archbishop, to deliberate together on common matters of religion. And indeed, wise decrees were established at various times, of which many still remain, and whose authority has been of great value, either to suppress heresies or to maintain the discipline of morals in the clergy and the people. The fame of this celebrated place recalls above all the Third Council of Carthage, held by the most valiant Bishop Aurelius, in which Augustine brought forth the light of his sanctity and genius. — Such salutary fruits, obtained by the Bishops of Carthage through diligent effort, should be attributed primarily to their connection with this Apostolic See. For they understood that it was divinely established that the Church of Rome should be the principal and teacher of all the Churches, and that, just as from the root to the branches, so from it all the beginnings of life and verdure should flow to the individual Churches. Therefore, they were accustomed to maintain a perpetual and intimate connection with the successors of the blessed Peter, bound to them. This is testified by various monuments of letters, the acts of Councils, and legations sent from time to time to the Roman Pontiff on important matters, and especially by the letters of Optatus and Cyprian, which bear the weight of great authority. And it is worthy of note that this obedience to the Apostolic See is not due to the length of time, nor is it weakened by those formidable changes in circumstances. From this, Africa has received a double benefit: first, that in its greatest calamities it has always found refuge and solace in the Apostolic See; second, that, spurred by the teaching and protection of the Roman Pontiffs, it has repelled and extinguished the most pernicious heresies. But not long ago, the Church of Africa began to decline and turn towards decline, so that it would have lasted much longer if it had not been cut short by a violent death. For it did not perish through old age itself, but was overthrown by the arms of the barbarians. Indeed, it has been discovered how much evil the Vandali brought to Africa: whose unrestrained armies, wherever they left their mark, added the poison of Arianism to the plundering of cities and the destruction of citizens: and such was the terror everywhere, that

[*Latin ed. p. 212*]

212 APOSTOLIC LETTERS: The Catholics were in no way to breathe a respite, nor was any place granted to the lamenting for prayer or amendment (1). However, in the seventh century, the Saracens, enemies of the

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Christian name, having flooded those same provinces, as it were, with a storm, imposed the most grievous yoke of servitude upon the inhabitants, and Carthage itself, already so weary with troubles, was destroyed by fire and sword; and thus, they brought complete ruin and devastation to the Church. In those times, while a furious rage against the Catholic faith raged throughout, a harvest of martyrs arose, and a great number of Confessors, and excellent bands of brave bishops and priests, stood forth, so that it might seem that, just as the Church had been strengthened in Africa with Lodi, so too it appeared to be dying with dignity. — In those great darknesses that followed, two bishops of Carthage appear, scarcely known except by name: Thomas, of whom mention has been made above, and Cyriacus. For those who appear later, in the fifteenth century, were mostly ornaments. In the fifth century after the Saracen domination, when scarcely a few and almost vanishing vestiges of the sister Church remained in Africa, a man was found in Italy, who, with great zeal, embraced the salvation of the African people, and considered how the Catholic religion might be restored there. He was, as no one ignores, Francis of Assisi: who entrusted Aegidius and Electus, his disciples, to Tunis, the principal city of the province of Proconsularis in Africa, and near Carthage, and ordered them to strive, as much as they could, to restore those people to the Catholic institutions. A difficult and arduous undertaking, if any other: in which both labored greatly with charity and the highest fortitude: one, however, enriched the praise of the most holy purpose with a noble martyrdom. — Soon after, our predecessor, Gregory IX, sent other men from that very institute to cultivate the souls there: but, because their labors were interrupted by barbaric persecution, it became necessary that the land of Africa should have no apostolic men until the seventeenth century. Then, with the authority of the sacred Council, an Apostolic Prefecture was instituted, which included the provinces of Algerien, Tripolitania, and Tunis: and it was ordered that the Franciscan friars, Capuchin, should administer it. — Afterwards, it was decided to create a separate Apostolic Prefect, to whose authority everything in the land of Tunis would be subject: and those religious brethren were chosen for that office. They fulfilled this laborious work, which they had undertaken with courage, with equally outstanding zeal, so that they have shown, in every way, great proofs of what charity can accomplish. For they endured incredible hardships in that savage Saracen cruelty: and many...

[*Latin ed. p. 213*]

APOSTOLIC LETTERS 213, who, consumed by the severity of the heavens, slain by the sword of the barbarians, and exhausted by perpetual vigils, have attained the honors of martyrdom. But their constancy has wonderfully benefited the growth of the religion: and those benefits which they have brought to Africa in recent times are not insignificant, namely, the

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founding of several parishes, schools opened for the instruction of children, and certain pious institutions established for the relief of the afflicted. At the beginning of this century, when French military forces sailed to Africa and settled on the maritime coasts, a province was established there, and its influence began to grow among them. Not long afterwards, when an Archbishop was appointed to the Algerians, those vast regions, which had been held for a long time under the dominion of the Saracens, seemed to regain some of their former dignity. Then, with the establishment of the Dioceses of Constantine and Oran, in many places where the Church had once flourished, the most holy rites of the Catholic faith were restored after a long interval. The region of Tunetana, as the number of Christians increased, was changed into an Apostolic Vicariate and received a Bishop from the Roman See. And from that time, many things have been provided for the wholesome discipline of Christian morals: parishes have been expanded, schools have been increased, and several societies have been formed for the cause of piety. These promising beginnings have given many hope that, once colonies are established in that region where Carthage was located, the leading city of Africa might one day be restored from its ruin, and, according to the customs of the ancients, receive a new Bishop from the Roman Pontiff. We rejoice that this hope has been partially fulfilled: and, with God's help, we do not doubt that it will be fully realized. For the Archbishop of Algiers, His Eminence Cardinal Charles Martial Lavigerie, of the Sacred Roman Edict, having taken over the administration of the Vicariate of Tunetana, has brought a wise and diligent mind to bear on the propagation of the faith and the stable constitution of the sacred affairs. He has accomplished many useful things in a short time, and he has undertaken not a few things to revive Carthage from its ashes. And indeed, in the region of Mugara, which is close to the place where Cyprian consecrated it with his blood, and not far from the place of his burial, within the very ruins of Carthage, he has erected a bishop's residence with an adjoining chapel: and there, the inhabitants and neighbors, especially the poor and the afflicted, find daily relief from their miseries. He has also appointed priests in the bishop's residence, as well as in Tunet and in other more frequented places of the Vicariate, to perform the duties of the sacerdotal ministry, and these very priests are diligently assisted by the Capuchin friars. In the region that was once Byrsa, the Carthaginian Seminary was founded: and its students, with growing hope for the new Diocese,

[*Latin ed. p. 214*]

214 APOSTOLIC LETTERS: In these letters, theologians, and those skilled in philosophy and the humanities, are educated through the instruction and guidance of learned doctors. He added many new parishes to the existing ones, and he established one within the basilica, which is now called after Saint Lewis, in that very place from which the most

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pious king was called to eternal blessings in heaven. Furthermore, he opened a hospital for those suffering from the combined burdens of old age and poverty; a dispensary for the care of the sick; and buildings for the education of young people of both sexes. Attracted by these benefits and advantages, many have already begun to inhabit those places, filled with hope and the prospect of the city's renewal. Finally, he ensured that the necessary expenses for the maintenance of the Archbishop and the continuation of the aforementioned endeavors would be perpetually provided. Therefore, having carefully considered all that has been mentioned, and having also invoked the judgment of the Holy Council for the propagation of the Christian name; that it may be beneficial to the entire Christian republic, and especially to the salvation and dignity of the Africans, we restore the Archbishopric of Carthage with the authority of these letters. Therefore, we order that those lands of Tunisia, in which Carthage once stood, and which at this time comprise five villages, namely La Mar sa, Sicli Bou Salici, Douar es Choit, La Malga, and Sicli Daoue, together with their churches, chapels, pious institutions, and all Catholic inhabitants of both sexes, be removed from the jurisdiction of the Apostolic Vicar of Tunisia, and be subject to and obedient to the Archbishop of Carthage in the future. Of the churches that are within the territory of the city, the Metropolitan shall be that which the one who executes these Our decrees deems most suitable, but without changing the title. The Archbishop of Carthage shall appoint one or more vicars general to assist him, if circumstances require it; and he shall also appoint advisors and assistants from the clergy to expedite the affairs of the Archdiocese. He shall also hear and resolve all controversies concerning marriages, and other matters in which the Archbishop has the right to be informed. He shall perform all other duties pertaining to the pastoral office. He shall take care that diocesan synods are held at the times established by law. He shall establish a College of Metropolitan Canons, according to the prescriptions of the laws of the Church, as soon as it can be done. One of the canons shall be the first in the College, with the dignity of Archdeacon; and two others shall be canonically elected, one of whom shall perform the office of Theologian, and the other the office of Penitentiary. The Carthage Seminary shall be permanently dedicated to the education of students for the priesthood. During the interregnum, the administration of the Archdiocese shall be carried out according to the prescriptions of the Apostolic Letters of Benedict XIV, namely *Ex supremi* and *Quam alta*.

[*Latin ed. p. 215*]

APOSTOLIC LETTERS 215 Concerning Suffragan Dioceses, the delineation of boundaries, and other matters pertaining to the perfect constitution of the Archdiocese, we desire that what seems opportune be de-

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termined completely. – Finally, to our Venerable Brother, Charles Martial, Cardinal Lavigerie, Archbishop of Algiers, Administrator of Tunis, we command that all things contained in these Letters be executed: either by himself, or through a person constituted in ecclesiastical dignity. We will that all and each thing which we have decreed through these Letters remain firm, stable, and valid, and that nothing whatever may affect them, not even our own and our Chancery's regulations, to which we derogate for the sake of these decrees. Therefore, no human being may infringe these Letters of ours, nor dare to contradict them with reckless audacity. If anyone should presume to attempt this, let him know that he will incur the wrath of the Almighty God, and of the blessed Apostles Peter and Paul. Given at Rome, near Saint Peter, in the year of the Incarnation of the Lord, one thousand eight hundred and eighty-four, on the fourth day before the Kalends of November, in the seventh year of our pontificate.

C. CARD. SACCONI

PRO-DATARIVS

– F. CARD. CHISIVS

VISA.

DE CURIA

I. DE AQVILA

ET VICECOMITIBVS

Loco gg Plumbi
Reg. in Secret.
Brevium

I. CUGNONIVS

[*Latin ed. p. 216*]

216 FROM THE CONSISTORY ACTS FROM THE CONSISTORY HELD ON NOVEMBER 9, 1884, THE ADDRESS OF HIS HOLINESS, POPE LEO XIII. How fiercely the storm rages against the Church, how frequent and how weighty are the anxieties that we, especially those of us who sit at the helm, must endure, perhaps is known to you better than to anyone else, you who, accustomed to offering us counsel and assistance in the administration of the Christian republic, and who, with due dignity, often

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share with us in the midst of the difficulties of affairs. Moreover, after we, through Encyclical Letters, have openly revealed the plans and machinations of clandestine societies, which was entirely demanded by the reason of our office and the public good, the long-standing hatred of our enemies seems to have flared up even more intensely, so that we fear that the days to come may bring even more arduous conflicts.

However, whatever adverse events hostile forces may bring about, we will face them with confidence: for we find rest and protection in the patronage of Almighty God, to whom it has been given and granted to bestow benefits upon His Church, so that, under His auspices and with His help, it may always be victorious, and may find opportunities for growth even in the midst of struggles. Indeed, if the memory of past centuries, since the founding of the Church, did not bear witness to this, enough would be confirmed by what we ourselves observe at this time. Behold, even in this most terrible war, which has long raged against the Catholic name, the Church performs its duties without fear: and it triumphs most greatly in this, that in the midst of such widespread corruption of opinions and morals, when the supreme good, which is the Christian faith, is in danger from perils on all sides, examples of awakened virtue are not infrequently encountered, and examples of concord, charity, and fortitude are renewed throughout the Christian people.

At the same time, we see new and extensive regions being opened to the Gospel by the grace of God. The Catholic name flourishes in America: the Bishops of the United States are to hold a council this very month, and will deliberate with common judgment on the proper ordering of ecclesiastical discipline. The same is true among the Australians, among the Indians, and in various parts of the East, so that the multitude of Christians—

[*Latin ed. p. 217*]

FROM THE CONSISTORY ACTS, 217, the number of vicars appointed to apostolic offices has increased considerably, requiring the appointment of new leaders in various places. Concerning Africa, although a large part of it still lacks Christian wisdom and is degraded by inhumane practices, We are nonetheless pleased and hope for good things in the future, because Christian institutions are already flourishing in the northern region, which borders the sea. — In this matter, there is considerable merit due to one man from your esteemed College, who, with the utmost concern for the common salvation of the African people, through his efforts and labors, has accomplished many excellent things in a short period of time. Therefore, We are very concerned about the well-being of this region; and while in Europe, plans are being discussed these very days to promote commerce and civil development throughout Africa, We, with a more salutary purpose, strive to spread the light of the Gospel through those lands and to protect it. — And foremost among Our considerations at this time is not

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so much a city, for it is almost nonexistent, but the memory of a city that was once very wealthy and powerful, which We understand to be Carthage: which, if posterity looks upon it with admiration, because it flourished in peace and war as the leading power of all Africa and a rival to Rome in size, all the more should it be regarded with admiration for its Christian virtues. Indeed, as is known to all and widely proclaimed, this city was the first to embrace the Christian religion from the city of Rome, and it has retained it so diligently that it can be compared to only a few cities in terms of the number of most holy men and the bravest martyrs. From ancient times, the Bishops of Carthage have held the dignity of presiding over all of Africa with primatial authority. And although, after the African barbarians ravaged it repeatedly, all its religious and civil glories were destroyed at once, and the city itself was utterly destroyed, the ancient glory and the merits of its people remained; and especially the praise of the Archiepiscopal See, which the great Cyprian, with his wisdom and virtue, ennobled for many years, and which he finally consecrated with his martyrdom! — Therefore, moved by these considerations and with paternal benevolence towards the Christians of the African people, We have deemed it fitting to firmly establish the administration of sacred things among them, and We have considered it timely to restore the honor of the Archiepiscopal Throne to Carthage, by Our authority: therefore, We have ordered that copies of these apostolic letters be promptly sent to you, Venerable Brothers. We do not doubt that this restoration of the ancient Archiepiscopal See will bring you great joy, for the sake of your great devotion to the Church; and at the same time, it will be no less...

[*Latin ed. p. 218*]

218 FROM THE CONSISTORY ACTS, we are confident that it will be pleasing and acceptable to you, that we have decided to supplement your most esteemed College with men of merit, whom doctrine, virtue, experience, and the works they have accomplished highly commend. These are: CAROLUS LAURENZI, Bishop in title of Amatensis, of the Holy Roman Church and Auxiliary to the Inquisition, whom the Holy Roman Church created Cardinal of the Order of Presbyters in a Secret Consistory on December 13, 1880, and whom we publicly announce today: MICHAELANGELUS CELESIA, Archbishop of Panormitanus, of the Order of St. Benedict; ANTONIUS MONESCILLO Y VISO, Archbishop of Valentinus; GULIELMUS MASSAIA, Archbishop in title of Stauropolitanus, of the Order of the Minor Capuchins; CAELESTINUS GANGLBAUER, Archbishop of Viennensis, of the Order of St. Benedict; ZEPHYRINUS GONZALEZ Y DIAZ, Archbishop of Hispalensis, of the Order of the Preachers; CARMEN MEROSI GORI, Secretary of the Sacred Congregation of the Consistory and of the Sacred College; IGNATIUS MASOTTI, Secretary of the Sacred Congregation of Bishops and Regulars;

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ISIDORUS VERGA, Secretary of the Sacred Congregation of the Council. What do you think? Therefore, by the authority of Almighty God, and of the holy Apostles Peter and Paul, we create and publicly announce the following: Sacred Cardinals: CAROLUS LAURENZI, MICHAEL ANGELUS CELESIA, ANTONIUS MONESCILLO Y VISO, GULIELMUS MASSAIA, CAELESTINUS GANGLBAUER, ZEPHYRINUS GONZALEZ Y DIAZ, and Cardinals Deacons: CARMEN MEROSI GORI, IGNATIUS MASOTTI, ISIDORUS VERGA, with the necessary and appropriate dispensations, derogations, and clauses. In the name of the Father, and of the Son, and of the Holy Spirit. Amen.

[*Latin ed. p. 219*]

FROM THE CONSISTORY ACTS 219. After delivering the preceding address, the Most Holy Father proposed the following sees: The CHURCH OF CARTHAGE, previously among the titular sees, was separated from the Apostolic Vicariate of Tunis by Apostolic Letters dated November 10th of this month; it was detached, restored to the rank of Metropolitan see, or newly erected and vacant due to the translation of the Reverend Father Peter Rota to the Archiepiscopal Church of Thebes. To which His Holiness promoted the Most Reverend and Most Reverend Lord Martial, Cardinal of the Roman Empire, a priest, Archbishop of Algiers and Apostolic Administrator of Tunis. The city of Carthage, once the capital of a great empire and the proconsular province of Africa, a metropolis and primatial see, is now seen in that part of Africa known as the Kingdom of Tunis, and is inhabited by several thousand citizens. Among the churches existing there, it will be permissible for the new Archbishop to choose that one and elevate it to the honor of the Metropolis, which he deems more suitable than the others. It will also be his duty to establish a Metropolitan Chapter according to the sacred canons. The Archiepiscopal palace should, as far as possible, be located near the Metropolis, or built. The funds for the Archiepiscopal table are sufficient and more than sufficient. The seminary has already been established by the new Archbishop, as Apostolic Administrator of Carthage. The territory of the Archdiocese currently includes several places commonly known as La Marsa, Sicli Bon Saud, Douacs Ckott, La Malga, Sidi Daeue, and especially two regions known as Mogara and Byrsa, which were separated from the Apostolic Vicariate of Tunis. THE METROPOLITAN CHURCH OF UTINE is vacant, due to the death of the Most Reverend Andrea Casasola, the last Archbishop of that see, who died outside the Roman Curia, by the favor of the Reverend Father John Mary Berengo, Bishop of Mantua. THE TITULAR EPISCOPAL CHURCH OF ARGIVEN, under the Archbishop of Corinthus, is vacant, due to the succession of the Reverend Father Bernard Anthony De Riso, of the Order of Saint Benedict, of the Cassinese Congregation, to the see of Catanzaro, by the favor of the Reverend Father Francis Benassi, the retiring Bishop

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of Guastalla. THE CATHEDRAL CHURCH OF FAVENTIN is vacant, due to the death of the Most Reverend Angel Pianori, the last Bishop of that see, who died outside the Roman Curia, by the favor of the Most Reverend Joachim Cantagalli, Bishop of Callius and Pergola.

[*Latin ed. p. 220*]

220 FROM THE CONSISTORY ACTS: The Cathedral Church of MANBEVETAN is vacant, due to the death of the Most Reverend Eusebius Magner, the last Bishop of that See, who died outside the Roman Curia, with the favor of the Most Reverend Doctor Joseph Ingami, titular Bishop of Sidon.

The Cathedral Church of TUAN is vacant, due to the translation of the Most Reverend Doctor John Mary Berengo to the Metropolitan See of Udine, with the favor of the Reverend Doctor Joseph Sarto, priest of the diocese of Treviso.

The Cathedral Church of CAURIEN is vacant, due to the death of the Most Reverend Peter Nmìez Pernia, the last Bishop of that See, who died outside the Roman Curia, with the favor of the Most Reverend Doctor Marcell Spinola and Master, titular Bishop of Milo, for presentation to the Most Serene King of the Catholics.

The Cathedral Church of STALLEN is vacant, due to the voluntary and willing resignation of the Most Reverend Doctor Francis Benassi, which was carried out and accepted by the SANCTITY ITSELF, with the favor of the Reverend Doctor Prosper Curti, priest of the diocese of Regiae.

The Cathedral Church of BRISIEN is vacant, due to the death of the Most Reverend John Baptist Montixi, the last Bishop of that See, who died outside the Roman Curia, with the favor of the Reverend Raymond Ingheo, priest of the archdiocese of Cagliari.

The Cathedral Church of XINEN is vacant, due to the death of the Most Reverend John de Leiss, the last Bishop of that See, who died outside the Roman Curia, with the favor of the Most Reverend Doctor Simon Aichner, titular Bishop of Sebast, by nomination of Francis Joseph I, Emperor of Austria.

The Cathedral Churches of CALLÍEN and PERGULA are perpetually and canonically united and are vacant, due to the translation of the Reverend Doctor Joachim Cantagalli to the Cathedral See of Faventia, with the favor of the Reverend Doctor John Baptist Scotti, priest of the diocese of Urbevetan.

The Cathedral Church of MARSORUM is vacant, due to the death of the Most Reverend Frederick de Giacomo, the last Bishop of that See, who died outside the Roman Curia, with the favor of the Reverend Henry de Dominicis, priest of the diocese of Avellino.

The Cathedral Church and the Cathedral Church of LABACEN are vacant, due to the death of the Most Reverend John Chrysostom Pogacar, the

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last Bishop of that See, who died outside the Roman Curia, with the favor of the Reverend Doctor James Missia, priest of the diocese of Secovi, by nomination of Francis Joseph I, Emperor of Austria.

The Cathedral Church of CAR is vacant, due to the death of the Most Reverend Didacus Mariani Alguacil and Rodríguez, the last Bishop of that See, who died outside the Roman Curia, with the favor of the Reverend Doctors Thomas Bryan and Livermore, priests of Malacita, for presentation to the Most Serene King of the Catholics.

[*Latin ed. p. 221*]

FROM THE ACTS: "THE METROPOLITAN CHURCH OF ALBI IS vacant, due to the death of the Most Reverend Stephen Emilius Ramadie, the last Archbishop of that See, who died outside the Roman Curia, by the favor of the Reverend Father John Eonteneau, Bishop of Agen, for the nomination of the most illustrious man, Julius Grevy, President of the French Republic. THE METROPOLITAN CHURCH OF 221 is vacant, without an Archbishop titular, formerly Mytilene. THE ARCHIEPISCOPAL TITULAR CHURCH OF MITILENE is vacant, due to the translation of the Reverend Father Anthony Mendes Bello to the Cathedral See of Pharaonensem, by the favor of the Reverend Father John Rebello Cardoso de Menezes, a priest of the Archdiocese of Braganza. THE CATHEDRAL CHURCH OF ST. JAMES OF VENEZUELA in America Meridionalis is vacant, due to the death of the Most Reverend Joseph Anthony Ponte, the last Archbishop of that See, who died outside the Roman Curia, by the favor of the Reverend Father Crispulo Uzcátegui, a priest of the Archdiocese of Venezuela, for the presentation, by virtue of an Apostolic Indult, of the most illustrious man, the President of the Republic of Venezuela. THE CHURCH OF ANGELOPOLIS, in the territory of Mexico in North America, is vacant, due to the death of the Most Reverend John Francis de Paula Vera, the last Bishop of that See, who died outside the Roman Curia, by the favor of the Reverend Father Joseph Mary Mora and Daza, Bishop of Verae Crucis, or Jalapa. THE ARCHIEPISCOPAL TITULAR CHURCH OF PERGEN is vacant, due to the death of the Most Reverend Francis Alexander Roullet de la Bouillerie, the last Archbishop of that See, who died outside the Roman Curia, by the favor of the Reverend Father August Edward Nuñes, a priest of Portalegre, who was also appointed as a coadjutor to the Archbishop of Elborensis, with future succession. THE CATHEDRAL CHURCH OF PHARAONEN is vacant, due to the translation, while he was still living, of the Reverend Father Ignatius do Nascimento Moraes Cardoso, who later became a Reverend Father Cardinal, to the Patriarchal Church of Lisbon, by the favor of the Reverend Father Anthony Mendes Bello. THE CATHEDRAL CHURCH OF ST. ALOYSIUS OF POTOSI is vacant, in the territory of Mexico in North America, due to the death of the Most Reverend Nicanor Corona,

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the last Bishop of that See, who died outside the Roman Curia, by the favor of the Reverend Father Joseph Mary Ignatius Montes de Oca and Obregon, Bishop of Linares. THE CATHEDRAL CHURCH OF ATREBATES is vacant, due to the translation of the Reverend Father William Renatus Meignan to the Metropolitan See of Turonensem, by the favor of the Reverend Father Desideratus Joseph Dennel, Bishop of Bellovacensis, for the nomination of the most illustrious man, Julius Grevy, President of the French Republic. THE CATHEDRAL CHURCH OF MACAONEN is vacant, due to the translation."

[*Latin ed. p. 222*]

222 FROM THE CONSISTORY ACTS: Reverend Father Emmanuel Bernardi de Souza Eimes to the See of Brigantia, with the favor of Reverend Father Anthony Ioackimi de Medeiros, Bishop [titular] of Thermopylae. The Cathedral Churches of PARENTIN and POLEN, perpetually and canonically united, are vacant, due to the translation of Reverend Father Aloysius Zorn to the Metropolitan See of Gorizia, with the favor of Reverend Father John Baptist Flapp, a priest of the archdiocese of Gorizia, at the nomination of Francis Joseph I, Emperor of Austria. The Cathedral Church of BOVINEN is vacant, due to the death of the Most Reverend Alexander Cantoli, the last Bishop, who died outside the Roman Curia, with the favor of Reverend Father Salvator, of the Order of the Friars Minor Capuchin of Saint Francis, from Naples. The Cathedral Church of LINGONEN is vacant, due to the death of the Most Reverend William Bouange, the last Bishop, who died outside the Roman Curia, with the favor of Reverend Father Alphonsus Martin Larue, a priest of Paris, at the nomination of the most illustrious Yiri Julius Grevy, President of the French Republic. The Cathedral Church of CHIAPA, in the territory of Mexico in North America, is vacant, due to the resignation of Reverend Father Raymond Maria Moreno and Castañeda, freely and spontaneously carried out in the hands of HIS HOLINESS and admitted by the SAME, with the favor of Reverend Father Michael Mariani Luque, a priest of the diocese of Angelópolis. The Cathedral Church of CONCHEN, in the territory of Ecuador in South America, is vacant, due to the death of the Most Reverend Joseph Anthony Remigius Esteves de Toral, the last Bishop, who died outside the Roman Curia, with the favor of Reverend Father Michael Leon, a priest of Conchen. The Cathedral Church of BOLIVAREN, in the territory of Ecuador in South America, is vacant, due to the resignation of Reverend Father Joseph Ignatius Ordouez, freely and spontaneously carried out in the hands of HIS HOLINESS, and admitted by the SAME, with the favor of Reverend Father Arsenius Andrade, a priest of the archdiocese of Quito, for presentation, by virtue of an Apostolic Indult, of the most illustrious Man, the President of the Republic of Ecuador. The Cathedral Church of GUATAQUILEN, in the territory of Ecuador in

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South America, is vacant, due to the death of the Most Reverend Joseph Maria Anthony Lizarzaburu, the last Bishop, who died outside the Roman Curia, with the favor of Reverend Father Robert Maria Pozo and Marin, of the Society of Jesus, a priest of Ibarra, for presentation, by virtue of an Apostolic Indult, of the most illustrious Man, the President of the Republic of Ecuador. The Cathedral Church of LINARES, in the territory of Mexico in North America, is vacant, due to...

[*Latin ed. p. 223*]

223 FROM THE CONSISTORY ACTS: The translation of the Reverend Father Joseph Mary Ignatius Montes de Oca and Obregon to the See of Saint Aloysius of Potosi, with the favor of the Reverend Father Blasius Enciso, of the Order of the Regular Canons of Saint Augustine, a priest of the archdiocese of Guadalajara. The titular episcopal church of LYCOPOLIS, under the Patriarch of Alexandria, is vacant, due to the translation of the Reverend Father Anthony Thomas da Silva Leitào e Castro to the See of Angolema, with the favor of the Reverend William Cramer, a priest of the diocese of Muenster, who was also appointed as a suffragan bishop of Muenster to perform pontifical and other pastoral duties in the city and diocese. The titular episcopal church of SINOPOLIS is vacant, due to the translation of the Reverend Father Anthony Pistocchi to the cathedral see of Cassano all'Jonio, with the favor of the Reverend Raphael Molina, a priest of the archdiocese of Saint James of Chile. The titular episcopal church of CASTORIUM is vacant, under the Archbishop of Acridana, due to the death of the Most Reverend John James Kraft, the last of that Archbishop to die outside the Roman curia, with the favor of the Reverend Father Francis Gasparic, a priest of Zagreb. The cathedral church of BELLOVACUM is vacant, due to the translation of the Reverend Father Desideratus Joseph Donnei to the cathedral see of Arras (-Boulogne-Saint-Omer), with the favor of the Reverend Joseph Maxentii Pèronne, a priest of the diocese of Soissons (-Laon-Saint-Quentin), upon the nomination of the most illustrious man, Julius Grevy, President of the French Republic. By a papal brief, the following churches were conferred: The titular archiepiscopal church of THEBARUM is vacant, due to the death of the Most Reverend Aloysius Biscioni Amadori, the last of that Archbishop to die outside the Roman curia, to the Reverend Father Peter Rota, the Bishop of Carthage. The metropolitan church of SANTA FIDEI DE BOGOTA in the Confederation of States of the Republic of Colombia, in South America, is vacant, due to the death of the Most Reverend Vincent Arbelaez, the last of that Archbishop to die outside the Roman curia, to the Reverend Telesphoro Paul of the Society of Jesus, the Bishop of Panama. The titular episcopal church of LIS ROSEN is vacant, under the Archbishop of Anazarbus, due to the succession of the Reverend Father Mariangeli Emmanuelis de Briey, the deceased Bishop of Meaux, to the Most Reverend Augustine Allou, to

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the Reverend Felici Julius lourdan de la Passardiere, a priest of the diocese of Coutances, of the Congregation of the Oratory. The titular episcopal church of THEBESTAN is vacant, under the Archbishop of Carthage.

[*Latin ed. p. 224*]

FROM THE CONSISTORY ACTS 224. The Most Reverend Just Alphonsus Aguilar, titular Archbishop of the Church of Selimbrien, having departed this life outside the Roman Curia, the Reverend Father Dominic Cocchia, Abbot General of the Order of Discalced Carmelites of Vienna. The titular Episcopal Church of Bethsaiden, vacant by the death of the Most Reverend Raphael Carbonelli, the last Archbishop, having departed this life outside the Roman Curia, the Reverend Father Anthony A y res de Gouvêa, a Priest of Oporto. The Cathedral Church of Helena, erected by His Holiness in the Territory of Montana, the Reverend Father John Baptist Brondel, transferred from the Church of Vancouverien. The Cathedral Church of Vancouverien, the Reverend Father Charles John Seghers, transferred from the Church of Oregon City. The Cathedral Church of Philadelphia, the Reverend Father Patrick Ryan, transferred from the Church of Salaminen. The titular Episcopal Church of Ancyren, the Reverend Father John Cirino, General Vicar of the Archdiocese of Palermo, transferred from the titular Church of Derbon. The titular Episcopal Church of Anazarben, the Reverend Father John Baptist Salpointe, transferred from the Church of Dorylen, and appointed as coadjutor with future succession, the Reverend Father John Lamy, Archbishop of the new Mexico of the Holy Faith. The titular Episcopal Church of Gratiae, of the Order of the Preachers, having relinquished the Church of Saint Paul of Minnesota. The Cathedral Church of Fernen, in Ireland, the Reverend Father James Browne, a parish priest in that Diocese. The Cathedral Church of Ossorien, in Ireland, the Reverend Father Abraham Browring. The Cathedral Church of Davenport, in the United States of America, the Reverend Father Henry Cosgrove, former administrator of that Diocese. The titular Episcopal Church of Calcaewen, the Reverend Father Anthony Agliardi, elected as Apostolic Delegate to the Eastern Indies, of the Armenian Rite, the Reverend Father Joseph Ferrili, in Armenia, of the Armenian Rite, erected by His Holiness, the Reverend Father Paschal Giamgian. The Cathedral Church of De Muse, in Mesopotamia, of the Chaldean Rite, the Reverend Father Stephen Kaynoia. The Cathedral Church of Zachuen, in Mesopotamia, of the Chaldean Rite.

[*Latin ed. p. 225*]

FROM THE ACTS OF THE CATHEDRAL CHURCH of Manchester in the United States of America, erected by His Holiness, the Reverend Dionysius Bradley. THE CATHEDRAL CHURCH OF COVINGTON, in the province of Cincinnati, United States of America, the Reverend Peter

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Camillus Maes. THE EPISCOPAL CHURCH OF MADAU- REN, the Reverend Epiphanius Carlassare, appointed as Apostolic Vicar. Hupé Orientalis in China. THE EPISCOPAL CHURCH OF TITULUS, 225. THE EPISCOPAL CHURCH OF USOLEN. The Reverend Benjamin Jeremiah of the Order of Minor Observants, elected as coadjutor with future succession to the Reverend Eloi Cosi, Apostolic Vicar of Chan-tong in China. THE EPISCOPAL CHURCH OF TORONEN. The Reverend Francis Saturin Guicard of the Seminary of Foreign Missions, appointed as coadjutor with future succession to the Reverend Father Francis Lions, Apostolic Vicar of Kui~Tcheou in China. RIS HAUAREN. The Reverend Salvator Massot, of the Order of the Friars Preachers, elected as Apostolic Vicar of Fukien in China. RUSPEN. The Reverend Anthony Mary Buhadgiar, of the Order of Capuchins, appointed as auxiliary to His Eminence Cardinal Charles-Martial Allemand-Lavigerie, Apostolic Administrator of the Vicariate of Tunet. THE EPISCOPAL CHURCH OF LAMBESITAN. The Reverend Alphonse O'Callaghan, appointed as coadjutor with future succession to the Reverend William Delany, Bishop of Corcagiensis. THE EPISCOPAL CHURCH OF BETHSAIDEN. The Reverend Anthony-Ayres de Gouvea, Portuguese. THE EPISCOPAL CHURCH OF MACRANIEN. THE EPISCOPAL CHURCH. The Reverend John Healy, elected as coadjutor with future succession to the Reverend Father Patrick Duggan, Bishop of Clonfertensis. MAGYDEN. The Reverend John Cagliero of the Congregation of Saint Francis de Sales, appointed as Pro-Vicar of Patagoniae Septentrionalis. Acts, Volume XVII, page CXOVIL 15.

[*Latin ed. p. 226*]

226 FROM THE HOLY CONGREGATION FOR THE PROPAGATION OF THE FAITH, JURISDICTIONAL DECREE, dated March 27, 1884. Marians D'Argenta and Margaret Sirigo, from Thera, in the Diocese of Santorini, in the Aegean Sea, by a legally requested instrument dated June 21, 1668, before the Diocesan Vicar, made the following arrangements: – "To his nephew, Reverend Father George Gavrà, they assign funds for the benefit of his soul and that of his parents," so that said Reverend Father George may possess and hold these established goods, and may use their fruits, and may receive all their benefits, under the condition that these possessions be transmitted always from the presbyter to the next presbyter, that is, to the Latin presbyter. And if, with the passage of time, another priest should be closer, this priest shall claim the funds from any possessor, and shall satisfy the burdens soon to be imposed. This type of endowment was already recognized by the Ordinary as a Chapel or ecclesiastical benefice, beginning with the first vacancy which occurred in the year 1711. Indeed, by his decree, the Ordinary admitted a chaplain to the possession of the endowment: and other Bishops of Santorini have consistently acted in this manner. By this action, the canonical foundation is confirmed, according

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to what is stated in Couvarruv, I. 3, var. c. 16, n. 10; Rota Gonzalez in reg. 8, gloss. 5, no. 53. In the aforementioned year 1711, when the first called Gavrà died, three individuals competed for the benefice, namely: the cleric Loisus Delenda, John D'Argenta, already a priest and nephew of the founder, and also Angelus Sannuodo, also a nephew, but from the sister. With the parties contending, the Ordinary favored Loisus Delenda, the cleric, as being closer in the direct line, and more closely related to the founder. SUMMARY OF THE FACTS.

[*Latin ed. p. 227*]

JURISDICTION 227, pertaining to close relatives. Since the cleric had been elected, and he could not fulfill the obligations, the precarious possession of the benefice was granted to two others, so that they might satisfy the obligations in a fraternal manner, and share the fruits of the benefice for the sake of peace. A more serious dispute arose when, in the year 1786, Anthony Delenda Loisi, the nephew and successor, was taken from the living. At that time, Nicholas Delenda was present in Quarten, in the second degree of both computations, connected to the founder, and Peter D'Argenta, the Prefect, a relative of the founder, but in the fifth degree of the canonical computation, and in the sixth degree of the civil computation. When the Sacred Congregation had proposed that certain doubts be resolved, namely: 1. "Whether D. Nicholas Delenda should be maintained in possession of the benefice," or rather, whether the passive patronage pertains to the priest of the Latin rite by virtue of the relationship with D'Argenta. 2. "Whether, upon the death of the actual possessor, and with descendants in a direct line from the founder present, the Bishop is obligated to confer the benefice upon the more worthy, or the one of greater age, or the priest?" At the general assembly on March 27, 1786, the following answers were published. - To 1. affirmatively to the first part, negatively to the second, unless they are relatives in the closest degree to the testator. To 2. that a pious endowment should be conferred upon the priest closest in kinship. And in the letter in which the resolution was communicated to the Bishop, it was added that he should not be considered unworthy. In the year 1799, when Nicholas Delenda died, Peter D'Argenta obtained the benefice, and the Ordinary explained the reason for the preference granted to him. Although others present were connected to the founder in the fifth degree of both computations, descending in a direct line, Peter D'Argenta was in the fifth degree of the canonical computation, and in the sixth degree of the civil computation, and for this reason, he was preferred, because he was a relative of the founder and older than the others. And because the reason by which the competitor was a relative of the founder had aroused complaints, the Bishop declared again that he had considered Peter D'Argenta worthy of being invested with the benefice, not because he was a relative,

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but because...

[*Latin ed. p. 228*]

228 The patronage pertaining to this foundation was, as with others, held jointly, and furthermore, the senior member, in accordance with a custom that has prevailed in the Diocese for many years. The competitors did not agree among themselves; but after four years, when the Bishop of Chios, acting as Apostolic Visitor, requested it, they offered him recourse. He, however, confirmed the action of the Ordinary by a decree dated February 16, 1804. In the year 1824, one of the competitors also presented the matter to the Sacred Congregation of Propaganda. The Sacred Congregation in March assigned the matter to the Metropolitan for resolution. After mature consideration, and noting that the contenders were found to be of equal standing in the fifth degree of canonical computation, he, by a decree dated July 27, ratified and confirmed the possession in favor of Peter D'Argenta. After the death of Peter D'Argenta, it is known that no other contestation arose until the year 1866, during three vacancies. But when John Siri go was taken from this life, several priests sought to contend for the position, some in the direct line from a daughter, and others in the collateral line from a brother and sister, but not all were connected to the founder by the same degree of consanguinity. These were: D. Anthony Cigalla, in the direct line, in the seventh degree, both in the canonical and civil computation; D. Nicholas Fumelli, from a brother; and D. Francis Brusetto, from a sister, established in the seventh degree in the canonical computation and in the eighth degree in the civil computation. The Ordinary awarded the benefice to Anthony Cigalla, because he was closer in the civil computation, and because he was older in years. This decree was confirmed by the Metropolitan with respect to the investiture of the older man, upon appeal by Fumelli. The Ordinary presented the matter for resolution to the Sacred Congregation, requesting that the question be thoroughly reviewed from the act of foundation. However, the direct line of consanguinity was considered to be preferable. The Sacred Congregation, after hearing the chosen consultor, and considering the doubts: 1. Whether the resolution issued in the year 1786 should be confirmed; and 2. How the pious disposition of Marino D'Argenta should be interpreted, decided that: 1. In the affirmative; 2. Provision should be made in the first [point].

[*Latin ed. p. 229*]

JURISPRUDENCE 229. With this decision, having established with safety that, in matters of passive patronage, all lines were to be admitted equally, a more serious dispute arose concerning the calculation of degrees. Namely, whether the canonical calculation, which prevails in marriages, should be followed, or the civil calculation, which prevails in hereditary successions. Indeed, in the year 1868, five priests from the D'Argenta family

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claimed the benefice, of whom only one was in the seventh degree of both calculations, and in a direct line; four were in the seventh degree of the canonical calculation, and in a collateral line; and the remaining one was in the eighth degree of the civil calculation, and in a collateral line from the founder. These were Anthony Matta, born in 1799; Nicholas Fumelli, born in 1803; Christopher Melagrani, born in 1812; John D'Argenta, born in 1827; and Nicholas Cigalla (the only one in a direct line), born in 1815. It is irrelevant to know how the matter proceeded until the year 1881, when the Ordinary, on August 10th, favoring the civil calculation, chose Nicholas Cigalla from among the claimants because "he was closer in a direct line" to the founder. Fumelli appealed to the Metropolitan Court of Naxia. The Archbishop, with the authorization of the Sacred Congregation, admitted the appeal, and after new arguments were presented, by a sentence of September 5, 1883, awarded the benefice to Fumelli; and condemned Nicholas Cigalla to restore the fruits, deducting the expenses for cultivation, and also the alms from the masses celebrated since the beginning of the dispute, which Fumelli was to pay. As for the fruits due before the aforementioned date, they were to be delivered to the Ordinary, who would allocate them to the pious work to which he judged them most necessary. Cigalla appealed this sentence to the Sacred Congregation, which requested the opinion of the Most Reverend Flavius Simoneschi, Bishop of Helenopolis. However, after a most careful exposition of the facts, he considered that the sentence of the Metropolitan should be confirmed: that is, that only the fruits from the beginning of the dispute should be restored, for the following reasons.

SUMMARY OF REASONS. The Reverend Prelate, in his opinion, stated that it was a constant custom in Thera that, among those of equal degree,

[*Latin ed. p. 230*]

230 In matters of patronage concerning pious foundations and benefices, the older candidate should be preferred. This is attested by the Ordinary of Sanctoriensis in a decree of August 2, 1799, in which he confirmed the contested possession of a benefice in favor of Peter D'Argenta, expressly stating: "He was preferred, as is customary, because he is older, a practice that has been introduced in this Diocese for many years in such competitions, for the sake of peace." Another decree, dated November 7, 1866, also supports this, in which the Bishop, concerning the preference of the priest Anthony Cigalla, stated: "Considering the memorable custom of this Diocese, namely, that among those of equal standing competing for a benefice, the older one should be preferred." The author observed that nothing is lacking in this custom to give it the force of law, according to text Can. 5, dist. 1. In the present case, two are contending in court: the Reverend Nicholas Fumelli and the Reverend Nicholas Cigalla, the former being older, having been born in 1803, and being of equal standing and connected to the

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founder in the seventh degree of consanguinity. The writer adds that everyone should note the difference between civil law and canon law regarding the computation of degrees of consanguinity in collateral lines. Civil law places brothers and sisters in the second degree, while father and son are in the first. Canon law, on the other hand, holds father and son, brothers, and sisters in the first degree, according to text, chapter 35, question 5. Civil law aims to determine who among the relatives should be preferred for the inheritance of the deceased, while the purpose of canon law is to determine up to which generation marriages between Christians were prohibited. Sánchez de matr., book 7, section 50, number 5, best explains that a son is more closely related to his parents than to his siblings, in an intensive, not extensive, sense. However, he continues, besides inheritances and marriages, there are other cases in which degrees of kinship must be calculated. The doctors teach that in other contracts, acts, and similar matters, the computation should follow that which is proper to the forum in question.

[*Latin ed. p. 231*]

JURISPRUDENCE 231: The active matter is subject to this. Indeed, in civil matters, and in ecclesiastical matters, a canonical computation must be employed; Couvarruv. in 4. Decret, p. 2. c. 6. §. 6. num. 8. Sánchez de matr. lib. 5. disp. 50. num. 6. And others are omitted, Pirhing ius can. S. 4 tit. 14. sub. 1. §. 1 num. 7. Adhering to this theory of law, the Sacred Congregation, in Eugubina on December 4, 1723, when the matter was discussed of granting dowries to female relatives closest to the founder; because of the nature of the pious endowment and because of the obligation of paying the same dowry to a certain chaplaincy; the doubt was "Whether the payment of the dowry must be made from the principal" or from the fruits: and whether the females established in the second or "third degree, according to civil law, or according to canon law" in this "case," the response was given on the 18th of the same month of December "That the payment of the dowry must be made from the principal" according to "the manner, etc., and that the computation of the degrees must be made" according to canon law. There was a disagreement among the doctors regarding the computation to be applied; Tir aquel, de retract. §. 1. Oíos 9. num. 33 and Garcia de benefic. part. 7. cap. 15. num. 26. argue that chaplaincies and benefices, at least in some way or by analogy, contain a matter of succession. Amostazo de causis piis lib. 3. cap. 8. num. 39. rejects the notion of succession but, in collateral lines, for the precise necessity, as he himself says, admits the civil computation. The Sacred Roman Rota sometimes overlooks the legal question and bases its judgment on the facts, as in the Calaguritana Chaplaincy of May 4, 1672. §. 7. before Taia; sometimes, however, it inclines to establish that, if the founder calls the closest relatives, the civil computation must be used: if relatives up to a certain degree, such as the third or fourth, canon law must be followed. Thus, in the Asculana Chaplaincy of June 26,

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1693. §. 6. before Benincasa and in the confirmatory judgment of June 28, 1694. before Mulheres g. 5 3. Nevertheless, authors of no less importance, keeping in mind the canon law prohibition against inheriting benefices.

[*Latin ed. p. 232*]

232 Concerning the jurisdiction to be invoked, and the exclusive competence of the ecclesiastical court in such matters; the learned Cevallos, in his *Quaestiones Communes*, question 19; Parladori, *Disputationes*, district 109, number 16; Mieres, *De Maiorat*, part 1, question 1, number 3; Gratian, *Disputationes Forenses*, chapter 76, number 10, have ruled accordingly. More recently, the Sacred Roman Rota has also adhered to this judgment, as can be seen in the document *Nullius seu Sublacen. Canonicatus*, April 25, 1803, § 7, concerning *De Alteriis*. And this, the esteemed author stated, was "just and proper": for the Sacred Canons have prohibited the inheritance of benefices and chaplaincies. The text is found in chapter 7, cause 8, question 1: "Let no one presume to claim or demand, by hereditary right, churches or prebends, or any ecclesiastical offices." Consequently, having established the foregoing, it follows that in this case, civil law is superseded. Returning to the facts, it was argued that canonical law should take precedence, observing a period of seventy years: which, even if it were contrary to or beyond the law, would create a custom and possess the force of law itself; as Bartolus states in *Repetitiones*, book 1, on customs, number 19; and as Ostiensis explains in *Summa Rituum*, on customs, number 5; and as Reiffenstuel writes in *Jus Canon*, title on customs, § 7, number 175. However, in this case, the episcopal decrees were fully in conformity with the law: and they establish the true and legitimate manner of determining the degree of kinship in the benefice in question, as the Sacred Canons prescribe. In this case, it would have been sufficient for some acts to have occurred that would favor the prescription of a custom; as the Rota decided in number 16, part 15, of decision 273, recently. It was also pointed out that in the year 1755, the Ordinary granted the benefice to the cleric Loiso, placing the priests D'Argenta and Secundo after him. But this objection was answered: the Ordinary granted it to him because he was connected to the founder by a closer and more direct kinship. For he truly believed that a direct line should be preferred over collateral lines.

[*Latin ed. p. 233*]

JURISDICTION 233 This can also be understood from the fact that it disregarded another condition imposed by the founder, namely, that a benefit should be held from a priest to a priest: for the cleric Loisus Delenda was a cleric. Granted, but also not conceded, in the year 1711, according to civil reckoning, an ordinary use was made, a deed of this kind, which was not followed by anything else, nor did it receive any contradictory sanction, which could prevent the year 1799 from seeing the emergence

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of opposition through the election of the prelate D'Argenta, contrary to the observance according to canonical reckoning; which would have retroactively subjected the granting of benefits to the authority of ecclesiastical law, and would have established the beginning of a custom according to law; Leuren, *Iuris Canonici* lib. 1 tit. 4 de consuet. quaest. 372. This custom was more in conformity with the nature of the subject matter; De Luca de dote disc. 131 num. 8. Nicholas Cigalla, in the last place, observed, rule 36. The Chancellery does not support the three-year possessor, who never had legitimate possession of the benefit in the title of institution, but was tolerated during litigation, so that he might possess the benefit. However, if peaceful possession is lacking, the three-year possession is to be considered null; Riganti, *Commentarii in Regul. 36 Cancellariae*, n. 54 et 91. But the same Cigalla supports good faith, by which the benefit was possessed, for retaining the fruits of the benefit until the day the lawsuit was moved; Reiffenst. *Ius Canon. in tit. de restitutione spoliat.* §. 57 num. 142. With these observations in mind, the purpose was to resolve the doubt as to whether the opinion of September 5, 1883, should be confirmed or rejected in this case. RESOLUTION. The Sacred Congregation, after deliberation, on March 27, 1884, decided to respond: Affirmatively, according to the following terms. The terms are that the priest Cigalla should restore only the fruits received from Fumelli from the day the lawsuit was moved, deducting the expenses for the cultivation of the funds, and the alms of Masses celebrated; and that these expenses and alms be remitted to him.

[*Latin ed. p. 234*]

234. JURISPRUDENCE concerning the safeguarding of fruits, previously improperly received, after the fact, with the understanding and consent of the Most Reverend [authority], is as follows: It is the intention that, in order to prevent questions from arising in each and every case concerning this benefit, the canonical computation of degrees of kinship should prevail in the collation of the benefit, and that custom should be observed, among those of equal degree of kinship, to choose the elder. From which it is gathered: I. That the civil computation of degrees of kinship must be maintained in hereditary successions. II. In matters which are not hereditary successions, that computation must be applied which is proper to the forum to which the matter pertains. III. Therefore, in the matter of Benefices and Chaplaincies, it is not permissible to deviate from the canonical computation. IV. In the case where the canonical computation has been observed and adhered to, it has the greatest strength, since it is in accordance with the law. V. If the possession of the benefit is lacking, the rule of the Chancery, number 36, concerning the triennial possessor, should not be invoked. VI. The perception of fruits in good faith excuses the person from their restitution until the day the lawsuit is initiated. JURISPRUDENCE. Dated September 11, 1884. SUMMARY OF THE CASE. By an act dated

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April 21, 1601, Peter D'Argenta, a Priest from Thera in the Diocese of Santorini, in the Aegean Sea, established two benefices in suffrage for the souls of his parents and his deceased sister, imposing the burden of performing the office in the Cathedral Church of St. John on Sundays, according to the prescribed order. Having established these benefices with endowments from goods purchased by himself, he reserved the right to nominate two priests to whom these benefices would be granted; under this law, upon the death of these priests, the Diocesan Bishop or his Vicar would freely nominate successors, so that they would fulfill the burdens imposed by him.

[*Latin ed. p. 235*]

JURISDICTION 235, this provision should never be discontinued. Four years later, on another day, April 21st, which they call the "codicil," the beneficiary himself named the first two, John and Aloysius, priests of D'Argenta; and he prescribed that, upon the death of these, the benefits should be conferred upon "other priests who are of D'Argenta; and if there are none" of that house, that the Bishop or Vicar should grant them to "those priests who subject themselves to the same obligations," and again, "whenever priests or a priest of D'Argenta are present, they should be preferred," and that they should "obtain the benefits with the attached obligations." During the pontificate of Pope Paul V, under the care of the Apostolic Visitator of the city of Therae, Peter De-Marchis, this institution was increased with new provisions. The benefits of D'Argenta were established as dignities with the title of Prefect and Treasurer, while the law remained that priests of the house of D'Argenta should always be preferred. And indeed, when, in the year 1633, the dignity of Treasurer became vacant, the Ordinary offered it to the priests Nicholas and Bernard of D'Argenta. And although these D'Argenta were from the island commonly called Leri, the Bishop added a clause to the proposition "so that it could be considered in any way in their favor, should the presbyter of that house leave the funds of this canonry." Both of them sent word of the benefit at that time, and later, Nicholas obtained the position of Prefect. From the year 1720, a serious question began to arise concerning the meaning of the codicil, which was brought before the Holy Congregation for the Propagation of the Faith, and it flared up repeatedly, especially in the years 1735 and 1759. In the year 1760, on November 15th, the Holy Congregation ordered the Ordinary "1. to meet with the parties involved to discuss the true meaning of the clause in the codicil, and especially the true meaning of the house of D'Argenta; and if agreement could not be reached, to send the authentic text of that clause." 2. "To order the parties involved to present, within a reasonable time, the evidence pertaining to the alleged right, especially the degrees of consanguinity or affinity with the testator. And on these matters, the

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Holy Congregation would render its judgment, expressing its opinion on all matters." Through the Ordinary,

[*Latin ed. p. 236*]

236 CONFERRAL OF BENEFICES... After mature deliberation on the matter, on June 20, 1763, the Sacred Congregation responded: "The passive patronage of which mention is made does not, at present, extend to the family of Angelus D'Argenta." Since then, there has been peace in the granting of such benefices. Two benefices were granted to priests of the D'Argenta family by right of patronage; and when these priests were lacking, the same were obtained by other presbyters, sometimes descended from the founder's sister; always, however, by the free choice of the Ordinary. But when, recently, the last Prefect, Nicolaus Fumelli, passed away, the old question was raised again, and the Ordinary proposed the following question to the Eminent Prefect for resolution: "Whether the aforementioned benefice of passive patronage, when priests of the family of D'Argenta are lacking, can be freely conferred by the Ordinary, or rather, by priests descended from the founder's sister?" The Sacred Congregation entrusted the task of forming an opinion on this question to the Most Illustrious and Reverend Father Flavianus Simoneschi, Bishop of Helenopolis. The following are the principal points contained in his opinion. SUMMARY OF OPINION. He states that the solution to the question depends entirely on the true and correct meaning of the words, "priests of the D'Argenta house," words which the founder used to designate the persons to whom he wished to grant the right of patronage. Indeed, he argues, it is beyond doubt that the founder did not use a mode of $\text{speaking contrary to common usage, but rather, the common language that all understand; and he used words that are commonly used to designate persons who belong to a certain kind, that is, a lineage or clan, under their own surname, and who are understood to be part of the general family, distinct and separate. The founder indicated those who are D'Argenta, or the house of D'Argenta, just as our ancestors indicated the Flavians or the Julians; and in our own day, the Bonapartes, or the house of Bonaparte. It is already established in law that a woman represents not only her own family, but also her own lineage.

[*Latin ed. p. 237*]

JURISPATRONATUS 237 ff. concerning the meaning of words and title I §. ult. ff. concerning the law of immunity. Tiraquel, on the retraction of gentiles, gloss. 9 no. 198: "A woman is the end of her own kind and of the family." Therefore, it would be absurd to call those born from families, such as those from Gabriellis de Campello and others into which women of the Bonaparte lineage have entered, by the name of Bonaparte; likewise, it would be absurd to call priests from the families of Delenda, Sirigo, Fumelli,

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Cigalla, and others, by the name of D'Argenta, or to call their houses the house of D'Argenta, because they descend from a woman of the D'Argenta family. For in this case, the question is not about consanguinity or descent, but about the surname and lineage. The disposition of the founder is as follows: "Those who are from this house have the right to benefits; those from elsewhere have no such right." It is truly the testator's intention that this is understood, as can be seen from the fact that after the calling of the Priests of D'Argenta, the free provision of other Priests was entrusted to the election of the Bishop, in case of their absence: for he used words of the most open meaning, unless they are of the same house. The Bishop confers these benefits. Indeed, it must be kept in mind that at the time when the founder wrote these things, there were more people with the surname D'Argenta; and already in the family of Gavalà, into which the founder's sister had entered, there were nephews of the founder. Therefore, if he had called all priests from the nephews of each surname, he would have made the granting of benefits perpetually contentious and impossible, and by that very fact, the election would have been left to the Bishop's judgment, devoid of all meaning. Truly, the nephews from the sister Mary, who married the man Gavalà, left a special inheritance from the founder's will, and if he had wanted the same regarding the benefits, he would undoubtedly have expressed it explicitly. The force of this argument is strengthened when it is known that four years passed from the institution of the benefits to the passive designation of the jurists, during which time he could conveniently choose those he wished to benefit. Therefore, it should be considered that the principle to be applied in this case is that he expressed what he wanted, and did not want what he did not express. This is the meaning of the words, which is valid for us.

[*Latin ed. p. 238*]

238 The jurisdiction and the *Therae* are to be excepted. Indeed, in the year 1760, the Ordinary of Propaganda *S. O.* decreed "that, together with the parts, he should give the true and proper meaning of the words used." He then added, "The Ordinary, in a report presented to the Sacred Congregation on June 20, 1763, stated that he had 'striven with all his might' to have them seriously and before God consider what was the meaning of the clause, and that D'Argenta and all those concerned in the matter had responded that they preferred the founder to be, in general, of the house of D'Argenta, removed from any line of descent by a female." To this, we must add the legal meaning of the words "house" or "family," as commonly understood by our courts and by jurists. In legal language, the words "house" or "family" designate the collection of related individuals. As stated in the *Institutiones*, book 1, chapter 196, and following, concerning significant words, "In civil law, we say that a family is the entire body of relatives, that is, a confusion of several families." Therefore, when

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"house" is used in connection with a *fideicommissum* (entail), it is to be understood as referring to the lineage of relatives; *Ancharan, Consilia*, 152, number 4; *Peregrin de fideicomm.*, article 19, number 27. Regarding the "house," if it is stated in the entail that it is to be so, it is the same as if it had been expressly stated to be the lineage or family. In Roman law, this principle was not always the same. In the laws of the *Digesta*, it was customary to include only relatives under the name of "family," excluding descendants through females. *Institutiones*, book 1, chapter 196, and following, concerning significant words. However, contrary to the laws of the *Codex*, Justinian included not only relatives under the name of "family," but also freedmen and even patrons up to slaves. *L. 4 Cod. de verb. signif.*. However, it is certain that this law of Justinian never acquired any force in Italy. Furthermore, even according to this law, since the children of a brother and their descendants do not bear the name of D'Argenta, they would have been excluded from the patronage in this case. Wishing to apply the meaning of this law, the most learned author adds: "Cuiacius mentions it in two places..."

[*Latin ed. p. 239*]

The interpretation of the law concerning patronage indicates that, therefore, those related by blood, freedmen, and slaves, were admitted to inherit under a family trust by Justinian, because they belong to the family and use its name; and it demonstrates that if this applies by name, then it also applies by family. Cuiac. Comment., in I. 6 C. tit. 38, vol. 9, and Comment., in leg. 114, §, Divi ff. de legat., vol. 7. That the law of Justinian never had force in Italy is shown by what follows. From the well-known theory of Ancharani, two cases are distinguished: 1. when the testator intended to benefit the agnates, that is, the descendants or the family line; 2. when such a family or lineage preferred certain individuals. In the first case, it is understood that only the agnates are called to enjoy the inheritance, because they preserve the name of the family or lineage. In the second case, the related by blood are also included in the call, since they are descended from the persons whom the testator intended to benefit; Ancharan, Cons. 27, no. 6. From this theory, the principle has universally prevailed in the courts, that if the testator placed the name of the family only in the call for the inheritance, impersonally, without designating any specific heir, then the agnates, exclusively, are entitled to it. This rule has been extended from inheritances to patronage; Card. De Luca, de iurepat., disc. 25, no. 3, and disc. 26, no. 6. Piton, de controv. patron., all. 100, no. 192. Gagliardi, de iurepat., cap. 11, no. 15. The jurisprudence of the Most Holy Roman Rota has consistently been in accordance with the teachings of these authors, as can be seen from the decisions of the Bononian court of May 15, 1741, § 14, concerning De Canilliac Hydruntina Beneficii; of June 25, 1756, § 5, before Olivatio; and in the confirmatory decision of July 1, 1757, § 7, concerning

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Herreros. Setina Beneficii, of April 23, 1787, § 7, concerning Strasordo; and of Urbevetana Jurispatr., July 4, 1794, § 8, concerning Priolo; and decision 12, no. 3, concerning Riminaldo. A case very similar to the present one, formally discussed, is found in the Septempedana Capellaniae of January 26, 1795, before Malvasia, § 4, where it is stated... "for since the name of the family is often extended indefinitely, according to the 'newest authentic law,' both to the agnates and to..."

[*Latin ed. p. 240*]

240 JURISDICTION: Relatives, whenever the calling is restricted to a specific family, with the addition of a surname, are, with no less certainty, included under that calling. It has long been the case that if a family is given a specific surname, only those who are relatives and who share that same surname can claim the right to present [a case], unless they are relatives and share the same surname. Similarly, in other instances, with certain terms omitted, the same principle is firmly maintained in the Asculan Jurisprudence of May 6, 1850, § 5, and in the confirmatory decree of January 31, 1851, § 5, before De Avella. The Holy Congregation of the Council conformed to these very principles in the Melevitan Institution of August 5, 1876, and January 27, 1877 (1). Finally, all of these things are, first, confirmed by observation. For this institution, immediately following in the year 1632, after the death of the two D'Argenta whom the founder himself named, remained uniform for nearly a hundred years, until Aloysius Delenda, the nephew of the founder's sister, obtained confirmation in the dignity of Prefect, by a decree from the Signature in the year 1735, due to an unreliable copy of the codex. But since fraud and deceit prevailed at that time, the principle holds that "fraud and deceit should benefit no one." Secondly, for a period of one hundred and twenty years, that is, from the year 1763 to the present, there has been constant and uniform observance. Indeed, the Santorian Ordinary reports that two benefices were always, by right, granted to the D'Argenta priests, and that in the absence of these, the same were freely granted to priests connected by blood to the founder, or not. How important such observance is, is known to no one: for it is considered the best and most faithful interpreter of any disposition; Constantin, vol. 191, no. 64, Piton, *de controv. patron*, p. 86, no. 22. He also states that observance should be followed, even though a more accurate understanding of the law may be contrary to it; *Op. cit.*, p. 83, no. 8. The Holy See teaches the same in the decision 141, no. 12, before Motines. (1) Haltes discusses this case in vol. X, p. 232.

[*Latin ed. p. 241*]

JURISPRUDENCE 241. In similar cases, it is commonly objected that, even if there are no direct heirs, at least relatives should be admitted to the patronage, unless the founder expressly excludes them. However, the Holy

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Roman Tribunal has already responded that such a subsidiary succession is not admitted unless there exists at least the principle of a legitimate call, which is called the "primary call"; *Rota Decis. 88, 18 cor. Molines; Decis. 71 n. 3 coram Olivatio: in Ravennaten. Fideicommissi 12 Januarii 1797 §. 7 coram Roverella, et in Septempedana Capellaniae 26 Januarii 1793 §. 15 coram Malvasia*, in which the following reasoning prevails: "But against Puccinelli, there is no common word, no presumption in favor of relatives: but an absolute and personal call is presented to the family of Manuzzinis," which, since it pertains to agnates (male-line descendants), also deprives agnates of the subsidiary succession; who not only lack the primary call, but, by a coerced call to agnates, are tacitly, but necessarily, excluded from the right of patronage.

With the foregoing noted, the purpose was to resolve the following doubt: Whether the benefice of D'Argenta, vacant due to the death of Canon Fumelli, is to be freely conferred by the Ordinary, or rather, should it be conferred upon one of the descendants of the founder's sister?

RESOLUTION. After discussion by the Sacred Congregation on September 11, 1884, it was decided to respond: After reformulating the doubt – Whether the benefice of D'Argenta, vacant due to the death of Canon Fumelli, with no member of the house of D'Argenta being eligible for said benefice, is to be freely conferred by the Ordinary, or should it be conferred upon one of the descendants of the founder's sister? – it was decided to resolve it with the following answer: Affirmative to the first part, negative to the second.

FROM THIS, ONE MAY CONCLUDE: 1. Those who descend from a female do not belong to the family of the mother, since the female is not only the end of her own family, but also of her gender. *Atta, Tom. XVII. fase. CXVII 16*.

[*Latin ed. p. 242*]

242. II. The term "house" or "family" designates the collection of several related families, from which relatives are excluded. III. Therefore, if a testator merely mentions the name of the family in the will, without designating any particular heir, then relatives are to be included in the inheritance, excluding agnates; and the same law applies in matters of patronage. IV. In such cases, it is of great importance to consider the specific circumstances of each case. DECREE by which all admissions to a confraternity or scapular union, which are invalid due to some defect, are benignly validated. July 20, 1884. MOST BLESSED FATHER. Brother P. Hyacinthus Duracino, Provincial of the Capuchin Province of Pennsylvania, humbly prostrated himself before Your Holiness, and, because admissions to scapulars often occur invalidly, as experience and the decree of the Sacred Congregation of Indulgences of September 18, 1862, seem to demonstrate, he humbly requests that Your Holiness deign to validate all invalid admissions to any

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confraternity or scapular union, provided they were performed in good faith. From an audience with His Holiness on July 20, 1884, Our Lord Leo XIII, Provident of Providence, having referred the matter to me, the undersigned Secretary of the Sacred Congregation of Propaganda Fide, benignly granted that those admitted with some defect, as mentioned above, may henceforth be able to obtain the individual indulgences pertaining to the scapular. Given in Rome, in the offices of the aforementioned Congregation, on the day and year mentioned above. For the Reverend Father ANTONIUS D. SECRETARY AGLIARDI.

[*Latin ed. p. 243*]

243 FROM THE HOLY CONGREGATION OF THE COUNCIL OF TRENT. DECREES OF THE TENTH SESSION, June 14th and July 12th, 1884. SUMMARY OF FACTS. From the most ancient times, the episcopal table of Cervia has collected tithes of fruits from the lands located within the boundaries of the diocese, with the exception of one-quarter of these tithes, which each parish priest collects within the limits of his own parish and retains for the proper maintenance of the parish. However, the distinguished parish priest of the Collegiate Church of Massa Fiscaglia does not collect one-quarter of the tithes from the lands, but instead, without regard to the greater or lesser yield of the crops, he regularly receives six measures of wheat, four measures and a sixth measure of honey, and seventy-two barrels of pressed grapes, from the episcopal table itself. The reason for this exception concerning the parish priest of Massa Fiscaglia is entirely obscure, although an ancient document exists which indicates that this arrangement has been in place since the fourteenth century. However, in the year 1876, through human intervention, the valleys of Massa Fiscaglia were rendered suitable for cultivation over a very wide area (3936 hectares). Consequently, the episcopal table claimed the tithes due on this newly cultivated territory. But when the landowners, having the right under the laws of the time to redeem their lands from the burden of tithes, attempted to carry out such a redemption, the Bishop, through protests and through intermediaries, took care to ensure that the aforementioned landowners completely abandoned the idea of redemption and instead pursued the plan of exchanging tithes for a sum of 8000.

[*Latin ed. p. 244*]

244 CERVIA. The amount of documents, annually to be paid to the Episcopal Treasury. This was indeed done through a public instrument, in which it is also read: in this agreement, it is understood that each parish has the right to a fourth part of the tithes from the lands subject to the agreement. With matters thus peacefully settled between the Bishop and the landowners, the parish priest of Massa Fiscaglia, both verbally

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and in writing, petitioned the same Bishop, as well as the administrator of the Treasury, to receive the fourth part of the new tithes. However, his petitions were rejected, and he appealed to the Sacred Congregation. The Bishop, who was consulted regarding this appeal, considered that nothing should be changed, and among other things, stated: "From the tenth century, the Roman Pontiffs have granted, indeed, have donated, to the Episcopal Treasury of Cervia, both directly and in terms of usufruct, the territory which it still possesses under the Duchy of Ferrara. This was further confirmed by Apostolic Bulls... and especially by that issued by Innocent IV in Lyons on the Kalends of February 1244, which begins: 'In the sight of the Apostolic See.'" At that time, this territory was almost entirely covered by water, with only a few houses appearing here and there, and the territory itself yielded no income, except for reeds and fishing. But as time passed and the valleys were drained, houses were built, and the Bishops of Cervia leased these lands, which had been left by the water, either to neighboring communities or even to private individuals under emphyteusis, reserving for themselves one-tenth (or nearly) of the income. In this way, as the population grew, the Bishops of Fico considered it necessary to build churches there and to establish parishes; and when it was necessary to assign a dowry or a suitable provision to the parishes themselves, the Bishops left one-fourth of the income to be collected from the emphyteutes, as a dowry and provision, which the Episcopal Treasury was entitled to receive by feudal or emphyteutic right, as mentioned above. But...

[*Latin ed. p. 245*]

CERVIEN. 24S: "If, perhaps, the territory under the parish of Massa Phiscale has, up to that time, yielded no, or very little, fruit to the episcopal treasury, or for any other reason, the parish of Massa Phiscale is not left with one-fourth, as are other parishes, of the tithes for the treasury, but rather a certain measure of wheat, honey, and grapes is assigned and given by the episcopal treasury itself, not from the territory, nor from the emphyteusis." *Disputatio Synoptica*. Having these things in mind, the request of the parish priest appears so reasonable and just that it requires no demonstration. Indeed, everyone knows that tithes of any kind are entirely due to the parish priests, (Cap. 29 and Cap. 30 concerning tithes); therefore, these [parish priests] also have a right based on law against the bishop himself; Barbosa de off. et potest. Paroch. p. 3 cap. 28 et §. 2 num. 7 et 8; "Fagnanus in cap. Cum contingat 29 de decim. num. 21; Pirhing eod. tit. num. 80. And this has been affirmed by the Holy Rota in several decisions reported by Cardinal Seraphino, decis. 802 num. 1. Therefore, when a doubt arises or a dispute concerning tithes, the burden of proof does not lie with the parish priest, but with those who claim the tithes for themselves, as the aforementioned Doctors unanimously teach. These principles are all the more

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important when it is a question of noval tithes. For these tithes are reserved in a special way for the parish priests, so that even a privilege of receiving tithes absolutely and indiscriminately granted to someone does not extend to noval tithes, unless express mention is made of these: Covarruvias Var. Resolut. lib. 1 cap. 17; Guttierez qq. can. cap. 21 num. 183; Barbosa in cap. Eoo parte 27 decim. num. 6 et 9; Zoesius eod. tit. num. 56; Pirhing ibid. num. 104, and many others. Indeed, a privilege specifically obtained concerning noval tithes by those who fully received the ancient tithes, does not extend beyond WHAT BENEFITS THE PARISH PRIEST."

[*Latin ed. p. 246*]

246 CERVIA. Metà dei suddetti *novae*, a meno che non sia diversamente specificato nel privilegio; Capitolo, Statuto 2, § 2, circa le decime. E questo è giustificato, poiché una simile concessione di privilegio è odiosa, in quanto pregiudica i Parroci, a cui, di diritto, spetta la competenza, e pertanto non deve essere estesa, ma piuttosto limitata, come si afferma nel capitolo "Cum tua", § 25, ultimo, circa le decime. Per questa ragione, lo stesso deve essere detto di altri titoli con cui si può acquisire il diritto di percepire le decime; Reiffenstuel nel titolo sulle decime, numero 158, scrive: "Se qualcuno scrive di percepire le decime in una parrocchia, o le acquisisce in altro modo, ha anche il diritto alle decime dei *novae* futuri?" Risposta: "No." Barbosa nel capitolo "Cum contingat", 29, h. t., n. 1, e lì l'Abate Ancharano, Giovanni Andrea, Pirhing e altri, citano, nel capitolo "Cum contingat", 29, h. t...". Pertanto, è chiaro che le decime dei *novae* non possono essere assolutamente negate al Parroco, a meno che non sia esibito un privilegio apostolico che parli specificamente di tutti i *novae*, oppure sia dimostrato un altro titolo equivalente a un privilegio. Ma nessuno di questi sembra essere provato in questo caso. Quelli che sono opposti dal Vescovo possono essere ridotti a questo: la Mensa vescovile di Cervia ha ottenuto dai Santi Padri il pieno dominio del territorio, esistente sotto il Ducato di Ferrara, che, nel corso del tempo, è stato concesso in emfitosi o in feudo, riservandosi le decime. Il Parroco, tuttavia, non ha alcun diritto su tali decime, sia perché queste costituiscono i redditi della Mensa, sia perché al Parroco è sempre stata attribuita la stessa misura di reddito. L'equità di questa disposizione sembra certamente essere giustificata, sia per il nuovo onere di provvedere al bene spirituale dei fedeli che abitano le terre ora coltivate, sia per la scarsità dei redditi con cui viene sostenuta la parrocchia. Per quanto riguarda il primo, il Parroco si è adoperato per far aumentare il numero dei fedeli in quei luoghi in cui, grazie alla prosperità economica, vengono coltivate terre e costruite nuove case. Per quanto riguarda i redditi, ha dichiarato che questi non superano le 584 lire, mentre il numero dei fedeli ammonta a 3100, in un territorio di quaranta chilometri. Ha avvertito

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che...

[*Latin ed. p. 247*]

CERVIEN. 247. The advocate for the parish priest argued that the bishop had, at least in part, recognized the fairness of his request, and had moreover received a promise from the same bishop of an increase in the annual stipend. Therefore, it seemed justifiable to conclude that the portion of the tithes requested by the parish priest should indeed be granted to him, either by law or, at the very least, by equity.

WHAT FAVORS THE BISHOP. On the other hand, the defender of the episcopal chapter endeavored with all his might to refute the facts presented, arguing that the parish priest had no right to a fourth part of the tithes. And first of all, he sought to demonstrate that the parish priest possessed a suitable and certain income, as befits those who care for souls, and as prescribed by law; citing Cap. 30 of the decree *Extirpandae* from the Council of Trent, session 7, chapter 5, and session 21, chapter 4, concerning reforms. Indeed, he stated that the parish priest, apart from the uncertain income from the alb and black vestments, had an annual income of 785.99 livres. This income was not burdened by any expense, since the expenses of worship were partly provided for by the treasury of the collegiate church itself, and partly by a certain annual payment made by the episcopal chapter. This was also evident from the apostolic letters by which the present parish priest was granted the benefice; in these letters, no mention was made of the right to collect tithes, nor was this ever asserted in the acts of possession. Furthermore, the advocate added, it is well known that the Supreme Pontiff is accustomed to explicitly enumerate the rights and privileges of a prebendary in the letters of appointment; and that a beneficiary can only claim those rights which are attributed to the prebend in pontifical bulls. Therefore, since the parish priest has a suitable and certain income, he cannot claim the tithes, because these are usually granted in cases of insufficient ecclesiastical income; citing Pyrrus Corradus, *Prax. benef.*, book 3, chapter 2, number 6. The advocate also presented another argument based on the memorable circumstance that the parish priest had always received the same amount of tithes, even though the cultivation of the land improved gradually, and it was not uncommon for the tithes to increase. And with the help of several testimonies, he demonstrated this.

[*Latin ed. p. 248*]

248 CERVIA. To demonstrate the validity of the claim, he invoked well-known principles of law, those pertaining to the matter, as well as the doctrine of the Most Holy Tribunal, in decisions 962, number 31, concerning Mohnes, and in Praenestina, March 22, 1849, concerning Martinez – there – "he who uses the property," the *centenaria*, "certainly with a better and more powerful title," and is supported by law. "If a pact exists? If

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a privilege exists? Whatever else you desire from the *centenaria* is to be presumed." He then argues that a privilege or pact must have intervened, but that the episcopal table is not required to prove the pact or any other title, since every title stands in perpetual observance. Furthermore, in this observance, there exists what is commonly called a *corrispettivo*: for the parish priests, who are obliged to collect a fourth part of the tithes from the lands, are constantly afflicted with hardships and tribulations, are subjected to the danger of not receiving any part of the tithes due to the lack of harvests, and are burdened with enormous expenses for the collection of tithes and the coercion of debtors. The parish priest of the place of Massa Fiscaglia does not experience these inconveniences, since he always receives income from the episcopal table, which, if added to the aforementioned benefits, provides an annual income of 29,20,29 or 2869,99, besides the uncertain income from the alb and black vestments. Finally, the advocate argued from the fact that the parish priest renders no spiritual service to the faithful in the valley, now cultivated and commonly called Volta. For this valley is almost twelve miles distant from the parish church of Massa Fiscaglia, and contains neither a village nor inhabitants. Since, therefore, the parish priest renders no service to the spiritual well-being of the faithful, the tithe, which is given in support and maintenance of the ministers of the Church, who provide spiritual things, should not be granted to him. After these points, the advocate turned to the final part of his argument, in which he sought to prove that, in this case, the tithes rightly belong to the Bishop, because Innocent IV confirmed the previous donations and expressly granted to the Church of Cervia the people of St. Vitalis, which is called Fiscalea.

[*Latin ed. p. 249*]

CERVIA. To 249 chapels, tithes, testaments, and other possessions, etc., belong ten estates of land, which your Church possesses, located in Massa Fiscaglia, on the main stream, in a place called "Canalis Mortuus," and in other suitable places, on said stream; the Church of Saint Mary in Pado Vecchio, with its appurtenances, etc. From these, it follows that the ownership of the lands pertains to the Church of Cervia. Furthermore, the Advocate continues, if this were to provide for the sustenance of the clergy, those serving the churches, a portion of the tithes would be assigned to them in that measure which seemed sufficient to the Bishop. It has therefore come to pass that the Bishops of Cervia have assigned a determined quantity of tithes to the parish priests of Massa Fiscaglia, and have reserved for themselves the right to collect tithes on the lands, even in the future, for the improvement thereof. This had its foundation in the fact that the Bishop governed the parish of Massa Fiscaglia through vicars appointed by himself, as can be seen from a certain document of the 16th century. To confirm this, it is added that the Bishop sometimes resided in Massa

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Fiscaglia, where he had a sufficiently large house. Therefore, it is undoubtedly the case that the tithes of new plantings belong to the Bishop. Just as the tithes of new plantings from parishes incorporated into his monastery, in which place the parish priest is located, are due to the Prelate, so too the tithes of new plantings from parishes belonging to his See are due to him. Finally, the Advocate states that the marshes now drained are not the property of any parish, because they lie between the parish of Massa Fiscaglia and other parishes. Therefore, the tithes of new plantings belong to the Bishop, as Engel states, *man. par. 4 cap. 1, no. 7: "If a forest, lying between two parishes, has been assigned as the boundary of both, then the tithes of the new plantings of these lands are due to the Bishop, because he is the parish priest of the place, who does not have his own parish."* With these things noted, the following point was to be demonstrated.

[*Latin ed. p. 250*]

250. QUERY. Whether the parish priest of the place of Massa Fiscaglia is entitled to one-fourth part of the new tithes in the case of Kosso.

RESOLUTION. The Sacred Congregation of Councils, having considered the matter, on July 1, 1884, decided to respond: Negatively.

FROM WHICH THE FOLLOWING ARE GATHERED:

I. It is certain by law that tithes of any kind are due to the parish priest; therefore, they have a legally founded claim against anyone; so that, in the matter of tithes, the burden of proof rests not at all with the parish priest, but with others.

II. Furthermore, if to anyone, by a pontifical indult, a privilege has been granted without distinction to collect tithes, the new tithes, according to the opinion of the Doctors, are entirely excluded; and are especially reserved for the parish priests.

III. However, there are two reasons why it is indicated that the parish priest is not obliged to pay new tithes in the case of Kosso, namely, that he enjoys certain and appropriate benefits, and that, by an age-old custom, the parish priest has never collected new tithes, even though the case of new tithes has occurred.

IV. The possession of a centennial and unchangeable right confers upon the Bishop a better title, legally supported, so that, without any proof of this title, the Ordinary can collect the new tithes.

(1) Compare page 31 of this Volume XVII.

[*Latin ed. p. 251*]

251 FROM SESSION 8. OF THE CONGREGATION OF BISHOPS AND REGULAR CANONS OF THE ROMAN COLLEGE, CONCERNING AFFILIATION AND CHAPLAINCIES, dated July 4, 1884. John Baptist

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Zanzero and his wife, Anne, donated all their property, by means of a deed drawn up by a Notary in the year 1850, to Vincent and Pio-Octavio Conti, father and son. However, they added a condition to the donation: to establish a chaplaincy in the Church of Saint Mary in Campitello, in ROMA, with an annual endowment of 180 scudi. They appointed Dominic Dell'Amico, a priest, as the chaplain, to compensate him for the services rendered and to be rendered, with the additional obligation of celebrating one daily Mass for the souls of the donors. They stipulated that all chaplains should celebrate or have celebrated a daily Mass in the Church of Saint Mary in Campitello, except for Dominic Dell'Amico, to whom it was permitted to say Mass in any church in ROMA, or outside of ROMA, as he pleased. Furthermore, if it should happen that, in the future, the income of 180 scudi, destined for the chaplaincy, were to be added to the public treasury, or were to suffer a reduction or diminution, or were to be subjected to any burden by a legitimate or illegitimate government; or if the same Sacred Visitation, or the venerable Basilica of Saint Peter, or any ecclesiastical authority were to intervene; in this case, they stipulated that the aforementioned income should be returned in full and free ownership to the donors, with the same obligation of the daily Mass, which was originally imposed upon the chaplaincy. In the year 1853, the donors passed away, and the chaplaincy was established according to the prescribed methods, in accordance with the sacred canons, and the alms were received until the year 1879 by Father Dominic Dell'Amico. However, the surviving heirs of the donation...

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 252*]

252 In ROMA, concerning the emancipation and chaplaincy, Octavius Pius Conti reported in 1883 that the Demanio [State property] had been in possession of the revenues constituting the endowment of the chaplaincy since 1879; and that he had redeemed the endowment from the Demanio by paying the sum of 5956.90 livres, with prior permission from the Penitentiary [office]. With these premises, the aforementioned advocate presented various points to be considered regarding the reversibility of the endowment, which he believed had occurred after the intervention of the civil government.

Synopsis of the Discussion. The Procurator of the Church of Saint Mary in Campitelli, one of those with an interest, maintained that there was no doubt about the reversibility of the chaplaincy's endowment according to Article 7 of the foundation. However, he stated that the apostolic approval was required, so that the advocate could legitimately avail himself of this right, because the nature of the chaplaincy, through this reversion, is

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changed into a pious bequest of manual masses, and the alienation is considered to have occurred when the chaplaincy's endowment is absorbed into the family assets of the donors. Nevertheless, he pointed out that the obligations imposed on the donors by said Article 7 of the foundation must be fully fulfilled, even after the change in the chaplaincy. He also observed that the case of reversibility, with regard to the revenues, pertains exclusively to the person of the donor, and in no way to the person of the chaplain, who remains entirely unchanged in his entity, and must be protected all the more, because he received the benefit as a remuneration, as stated in the instrument of the foundation. And therefore, if reversibility were admitted, the living chaplain would be deprived of all rights, and the will of the donors would be manifestly violated. Therefore, the Procurator stated that, in the case of reversibility, the burden remains with the donors and their successors to say Mass daily, as the pious founders had ordered; since an accidental change in the property cannot generate the cessation of the perpetual obligation of daily Mass, from which obligation the legatee cannot free himself, even by paying a certain sum for a single occasion. From which, the quality of the bequeathed thing is fruitful, BECAUSE THESE ARE THE THINGS THAT ARE AGAINST THE ADVOCATE.

[*Latin ed. p. 253*]

ROMAN CANON LAW, FRANCHISE, AND ECCLESIASTICAL BENEFICES 253 seeks its due; *De Laura de anniversariis et Capellanis*, Book 1, Chapter 3, paragraph 29. "If the matter in question is one that, by its very nature, is intended to last perpetually," then the disposition must be understood in such a way that "neither the initial act, nor the initial person, brings it to completion, but rather it progresses to further and infinite stages"; as Alciatus states, §. in this discourse, Um. 1, 18, paragraph 1. All of these things are properly consistent with the disposition whereby an anniversary is left, which, by its very nature, is intended to last perpetually, as has been said; and therefore, it must always be considered perpetual, even beyond the life of the testator or legatee; *Iuris Annualia*, 6 ff., concerning annual legacies; Leo, *De Officiis, Capellani quaestiones*, 5, section 1, paragraph 6.

Finally, the procurator concluded that the legatee should be reimbursed for the expenses incurred in redeeming the benefice from the treasury, after the death of the current chaplain.

WHAT IS ADVANTAGEOUS TO THE LEGATEE. The advocate pointed out that it seemed superfluous to seek the Apostolic approval to vindicate his own right concerning the recovery of the aforementioned patrimony of the chaplaincy, since he already has recourse to the Sacred Congregation of Bishops and Regular Canons, for the purpose of legally defining that right, and the method of claiming it. Furthermore, he observed that the spirit of article 7 of the disposition is more concerned with ensuring that

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the person of the patron is freed from any bond that would damage their authority and independence, than with protecting the chaplaincy from the rapacity of the treasury; for if it were otherwise, the founder would not have mentioned the Sacred Visitation, or other ecclesiastical authorities. In this matter, the patron becomes free and absolved as the owner of the revenues of the chaplaincy; and nothing remains for him except to ensure that a Mass is celebrated daily at his expense, and that there is no further determination of a location or sum for alms. And this begins from the time when the treasury compelled the advocate to pay a sum for the redemption of the benefice. Finally, it was deemed appropriate to adhere to the norm by which the Sacred Penitentiary granted to patrons the right to redeem benefices that are not vacant.

[*Latin ed. p. 254*]

ROMAN LIBERATION AND ECCLESIASTICAL BENEFICE. Having stated the foregoing, the following points were proposed for clarification:

I. By virtue of the law of reversibility, may the patron, in the aforementioned case, be obliged to celebrate a daily Mass?

II. Does this right pertain to the actual chaplain?

III. May the patron be exempted from the obligation of celebrating a daily Mass by paying a certain sum, only once? And, negatively,

IV. Does the indemnification of expenses, unjustly demanded for the redemption in the aforementioned case, have any validity?

RESOLUTION. The Sacred Congregation of Bishops and Regular Canons, after deliberation on July 4, 1884, decided to respond as follows:

I. Affirmative, according to the disposition of the endowment.

II. Affirmative, as in the first question.

III. and IV. These matters will be considered and addressed after the vacation of the ecclesiastical benefice.

FROM WHICH WE MAY CONCLUDE:

I. As long as the actual chaplain lives and holds the benefice, the obligations remain unchanged; which appears to be entirely in accordance with the intentions of the founders, who, when establishing the benefice, had in mind two things: namely, the suffrage for souls, both their own and those of others, and the remuneration for the good works performed by the designated chaplain, and to be received by him.

II. Therefore, the actual chaplain, as long as he lives, retains the same sum for the alms of the daily Mass, and the faculty of celebrating Masses wherever they are required to fulfill the obligations of the aforementioned

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benefice.

[*Latin ed. p. 255*]

255 Certain doubts concerning the authority of Bishops with regard to nuns subject to enclosure. On July 16, 1884. On July 16, 1884, the following questions were proposed to be clarified for the Congregation of Bishops and Regular Canons: I. Can a Bishop, by his own authority, permit women who wish to enter as pensioners to be received into monasteries subject to enclosure? II. Likewise, can the Ordinary, by his own authority, transfer a nun, either temporarily or permanently, from one monastery to another, even of the same Order, for a just cause? III. Finally, can the Ordinary, by his own authority, transfer a nun when she has been elected as the Superior of another monastery, or does he consider such a transfer useful and expedient with this office? The Sacred Congregation of Cardinals, entrusted with the affairs of Bishops and Regular Canons, having considered the above questions on July 16, 1884, responded in writing: "No, in all cases." (1) (1) It is not surprising that the act of jurisdiction is thus fulfilled by the Congregation, which, when presented with such doubts concerning monasteries, and whenever these nuns, delegated by Apostolic authority, are subject to the enclosure of the Ordinaries, must demonstrate that they do not use the authority of the Bishops who are specially exempted by the Apostolic See. Therefore, such positions are invalid and of no value.

[*Latin ed. p. 256*]

FROM THE CONGREGATION OF THE INDEX, DECREE, Feast Day, November 28, 1884. The Sacred Congregation of the Most Eminent and Most Reverend Cardinals of the Holy Roman Church, by order of the MOST HOLY LORD OUR POPE LEO XIII and the Holy Apostolic See, which is entrusted with the task of preparing and publishing the Index of books of pernicious doctrine, and with their prohibition, expurgation, and permission throughout the Christian Republic, has decreed and does decree that the following condemned and prohibited work, by order of the Sacred Congregation of the Holy Universal Inquisition, Decree, Feast Day, November 26, 1884, should be included in the Index: "La Scomunica di un' idea – Risposta al Cardinal Vicario di Roma per Monsignor (usurped title) Gr. B. Savarese – Rome, Edoardo Ferino's Establishment, 1884." This work is condemned according to Rule 2 of the Index of Trent, which states the following: "The books of heretics, whether those who after the year 1515 have introduced or stirred up heresies, or those who are the heads or leaders of heretics, such as Luther, Zwinglius, Calvin, Baltasar Pacimontanus, Schwenckfeld, and others of the like kind, whatever their name, title, or subject matter may be, are absolutely prohibited. The books of other heretics, which indeed treat of religion, are absolutely condemned." Therefore, no one of any rank or condition may dare to

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publish or print, or to read or retain, the aforementioned condemned and prohibited work, in any place and in any language, either now or in the future, but must deliver it to the Ordinary of the place, or to the Inquisitors of heretical depravity, under pain of the penalties prescribed in the Index of prohibited books. These things, having been reported to the MOST HOLY LORD POPE LEO XIII by me, the undersigned, S.I.C., from the Secret Archives, His Holiness approved the decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome, on November 28, 1884, by FR. THOMAS M. CARD. MARTINELLI, Prefect. FR. JEROME PIUS SACCHERI, of the Order of Preachers, Secretary of the Congregation of the Secret. Seals. Place, Day 2.) November 1884. I, the undersigned, attest that the aforementioned decree was affixed and published in the City. Vincent Benaglia, Magistrate. NOTICE: An error occurred on page 195, line 23, in the preceding volume: it was written - "Sententiam esse confirmandam" -; readers should correct it as follows: "Sententiam esse infirmandum" - (The sentence should be declared invalid).

[*Latin ed. p. 257*]

257 LETTERS from Our Most Holy Father Leo XIII, Pope, to the Most Excellent Nuncio in Paris, who manages the affairs of the Holy See: concerning the calming of dissensions, especially among Catholic writers of periodicals.

Most Reverend Monsignor. In the midst of the bitterness and difficulties that oppress Us, while the enemies of the Church wage a relentless war against her, nothing could bring greater consolation to Our heart than the union of all Catholics, standing together in a common defense against all attacks. We cannot, however, without deep sorrow, see dissensions arising among Catholics here and there. And especially in France, it must be acknowledged, these have broken out with ever-increasing intensity. The responsibility for this lies largely with the writers, and especially with journalists. Their passionate polemics against individuals, their incessant accusations and recriminations, providing daily fuel for discord, make peace and fraternal concord ever more difficult. And yet, if there is a nation to which We have shown Our solicitude above all others, and to which We have more often and with greater insistence recommended the union in faith and in the charity of Jesus Christ, then that nation is certainly France.

Amidst the most grievous sorrows and difficulties that almost oppress Us, while the very sons of the Church wage an implacable war against her, certainly nothing can bring Us greater comfort than the conspiracy of all Catholics, united in their efforts to break the assaults of the enemy. But it is most painful to Us to see dissensions arising everywhere among Catholics. Indeed, in France, above all, it must be confessed, these have broken out with daily increasing ardor: and the promoters and, at least in part, the authors of these things are the writers and authors of books and

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periodicals. For while the discussions, intrigues, and perpetual accusations of these individuals, burning with zeal for their own side, favor discord as daily food, peace and agreement of wills become ever more difficult. And yet, if there is a nation to which We have shown Our benevolence above all others, and to which We have more and more frequently recommended the union of souls in the faith and charity of Jesus Christ, then that nation is certainly France. Whenever the opportunity arises, We have sent letters to her, as is evident from the Acts of Our exhortations, Volume XVII, page 17.

[*Latin ed. p. 258*]

LITTERAE Every time we have had the opportunity to address you, this has always been the principal object of our most fervent exhortations. Indeed, while within this nation, sects and enemies of every kind unite to attack, in every way, the Religion and the Church of Christ, and they neglect nothing to eliminate its salutary influence from all organs of social life, what is the supreme interest for it? That all its children cease to consume their time and their strength in accusing and fighting each other, thus leaving to their adversaries every opportunity to advance ever further in their wicked designs. Moved by these considerations, We turn to you, Our representative among the French nation, so noble and beloved by Us, so that you may use all the means that your presence in those places, your knowledge of men and things, can suggest to you, to put an end to the dissensions among Our children, which We deplore. You, availing yourself of the reasons We have mentioned, apply yourselves to obtain from all, and especially from the editors of newspapers, that they currently set aside all discussion on the matters that divide them; that all, without distinction, "may submit with complete submission and with a spirit of tranquility to our intentions." And thus, united in one mind, and confident that they are acting in this way on the path of truth, they may be established.

[*Latin ed. p. 259*]

Let there be tranquility of spirit concerning the teachings of the Holy See on those matters; may all, united in the same sentiment, and confident of remaining thus in the path of truth, henceforth propose to themselves a single purpose: to dedicate all their strength to the defense of the religion, and to the salvation of society, which is threatened. For its part, the Holy See, faithful to the mission it has received, of instructing all peoples and preserving its children from error, follows with attentive and vigilant care all that occurs within the Catholic Church, and when it shall judge it necessary and opportune, it will not fail, as it has never failed in the past, to give to this purpose, through its teachings, light and direction. And to the Holy See, first of all, and also, under its guidance, to the other pastors Take heed to yourselves and to the whole flock, wherein the Holy Ghost hath

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placed you bishops, to rule the Church of God which he hath purchased with his own blood. The duty of the faithful consists of a single thing: to accept the teachings imparted to them, to conform their conduct and their thoughts to these teachings, and to support the intentions of the Church. In this, Catholic newspapers must first give the example. For if the action of the press should make it more difficult for the Bishops to fulfill their duties, if it diminishes reverence and obedience,

[*Latin ed. p. 260*]

260 Letters concerning their mission, if it should result in a weakening of the respect and obedience due to them; if the hierarchical order established in the Church of God were to be harmed and disturbed, when the laity arrogantly claim the right to judge the doctrine and conduct of their true masters and pastors, the work of such newspapers would not only be sterile for any good, but in many respects, would prove greatly harmful. May the Apostolic Blessing comfort you in the fulfillment of this mission, and of so many other grave duties that are incumbent upon you, and may it add strength to you in the proper execution of these duties, which We impart to you as a pledge of Our particular affection.

From the Vatican, 4 November 1884.

Given from the Vatican Buildings, the day before November in the year of Our Lord 1884.

LEO XIII, POPE.

LEO, POPE XIII.

LETTERS OF HIS HOLINESS, by which the Reverend Father Lachat is appointed Apostolic Administrator of the Diocese of Ticino.

LEO PP. XIII.

Venerable Brother, greetings and Apostolic Blessing.

We have with great pleasure observed the letters sent by you, from which we perceived the noble sentiments of your obedience and devoted will towards Us and this Apostolic See, and from which it was evident your priestly spirit and the singular zeal that impel you to care for the matters of religion and the spiritual well-being of your faithful.

Indeed, Venerable Brother, you are deeply affected by the desire to contribute, as far as is in you, to the restoration of religious peace in this Diocese, and you raise your mind to those considerations which concern the

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affairs of men.

[*Latin ed. p. 261*]

LETTER 261. Having exceeded the limits, and adhering to the deliberations of this Apostolic See, you have, following the example of many illustrious prelates, requested to withdraw from the administration of your Basle See, preferring to endure the present conditions there, which caused you sorrow and were a source of considerable distress to many. This, which is a most remarkable demonstration of your priestly virtue, is not surprising to Us, for We have long observed and recognized the outstanding qualities of your mind, and the salutary works which you have accomplished, in order to serve the flock entrusted to you. Therefore, Venerable Brother, while We accept your resignation from the Basle See and consider it valid, solely desiring to see the fruits of peace restored to that portion of the Lord's vineyard, We cannot, with an even mind, allow the Catholic Church in that region of Switzerland to be deprived of the benefit of your services. Therefore, We have deemed it fitting to entrust you with another office of great importance, namely, to dedicate your care to the faithful of the Ticino region, under the title of Apostolic Administrator. In this new field which is now open to your sacred ministry, you will find your sons obedient to your commands, you will find flourishing fields of piety, which require the diligent and zealous attention of a pastor, along with the instruction and guidance of experience, and adorned with those virtues which We know adorn you in your divine office. Thus, you will be able to serve the Church and your illustrious homeland, and to navigate your endeavors wisely and fruitfully, as you have done until now, and will continue to do in the future. Furthermore, as a special and deserved token of Our benevolence, We have decreed that you be co-opted into the most distinguished Order of the Pontifical Elders and be honored with the title of the Church of Damiata, a title which was bestowed upon Us by Our blessed predecessor, Pope Gregory XVI, when We wished to undertake the duties of the Belgian legation, and which is very dear to Us, as it reminds Us of those times when We first began our priestly labors in the service of the Apostolic See. This will indeed be a new demonstration by which the bonds of fraternity which previously bound Us to you, through esteem and affection, will receive new strength and vigor. Moreover, following the examples of Our predecessors, who, in order to honor the merits of illustrious prelates, sometimes deemed it fitting to adorn them with the insignia of the Archiepiscopal pallium, We bestow upon you, Venerable Brother, this insignia of pastoral honor, as a singular privilege.

[*Latin ed. p. 262*]

262 We attribute these letters as a proper and unique adornment and reward for your outstanding virtues. We fervently pray to God that He

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may fill your soul with the sweetness of His consolations, and that He may enrich your days with every kind of prosperity of soul and body, so that the light of your virtues may long shine among the Catholic peoples, for whose spiritual governance you are about to undertake the requested office. May this apostolic blessing, which we impart to you, Venerable Brother, from the depths of our heart, and also to the entire clergy and faithful of the Church of Basle, be a foretaste and pledge of these heavenly gifts. Given in Rome, near St. Peter, on the 18th of December, 1884, in the seventh year of Our Pontificate. —^—&—=»—●— APOSTOLIC LETTERS whereby the judgment given by the Archbishop of Compostella concerning the identity of the body of St. James the Apostle, and of Sts. Athanasius and Theodorus, his disciples, is confirmed. LEO, BISHOP, SERVANT OF THE SERVANTS OF GOD, FOR THE PERPETUAL MEMORY OF GOD. Almighty God, who is wonderful in His saints, most providentially willed that, while the souls of the saints are received into heaven and are filled with eternal joy, their bodies, preserved on earth, should be reverently honored by men and adorned with the splendor of religion.

Indeed, the providence and mercy of God are clearly manifested in this, who, while allowing many things to happen through Him for the benefit of others, also provides for our benefit, and for the glory that the saints attain on earth. For these are the most blessed testimonies of the blessed in heaven, which remain with us, and whenever we behold them, we recall the admirable series of outstanding virtues with which they shone forth as an example to others in the course of their mortal life, and we are strongly drawn to imitate them. For, as John Damascene testifies, the bodies of the saints are perennial fountains in the Church, from which, as from streams, heavenly gifts are poured forth upon the Christian people, and all those things of which they are most in need.

Therefore, it is not surprising that, by the providence of God, some of the bodies of the saints, which had previously been in oblivion,

[*Latin ed. p. 263*]

LETTERS 263. The hopes of posterity, as it were, faded in darkness, especially at those times when the Church is stirred by great upheavals, and when Christians require a more urgent encouragement to virtue. In this our age, when a most terrible war has been declared against the Lord and against His Christ by the power of darkness, the sacred relics of Saint Francis of Assisi, of the Virgin Saint Clare, of the Saints Ambrose, Doctor of the Church, Gervasius and Protasus, Philip and James the Apostles, have been discovered.

To this number must be added Saint JAMES THE GREATER Apostle, and his disciples Athanasius and Theodorus, whose bodies were recently found in the principal temple of the city of Compostela. It is well known and universally accepted, and has been confirmed by the writings of our

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predecessors, that after the Apostle James had suffered martyrdom, having been condemned to death by King Herod, his body was secretly taken away by two of his disciples, Athanasius and Theodorus. These men, fearing that the Jews would seize the relics of the holy Apostle, placed him on a ship and, after a long voyage, reached Spain, and, sailing around it, they arrived at the extreme shores of Gallaecia, where, as pious and ancient tradition holds, after the Ascension of Christ, Saint James fulfilled his apostolic mission, guided by divine counsel. When they arrived at the Spanish city called Iria Flavia, they decided to remain there, and they buried the mortal remains of the Apostle, which they had carried with them, in a crypt dug in the rock, within a structure built in Roman style, and they erected a small chapel above it. But when Athanasius and Theodorus had completed their earthly course, the Christians who inhabited those places, both because of the high esteem in which these two men were held, and so that they would not be separated from the body which they had so piously guarded in life, placed both of them in the same tomb, one on either side of the Apostle.

After the Christians were persecuted for a time, and the Roman Emperors ruled throughout the world, the sacred hypogeum was hidden for a time. But when peace was restored, among the Spanish people, who held the Apostle James in the highest regard, news spread of the translation of his body, and a crowd began to gather at the site of the tomb, perhaps with no less devotion than was shown to the tombs of the Princes of the Apostles, and to the cemeteries of the Hieromartyrs, in Rome and elsewhere. As the years passed, and the barbarians first...

[*Latin ed. p. 264*]

264 Then the Arab forces, under the leadership of Muza, invaded Spain, and especially those regions bordering the sea were ravaged by frequent incursions. The sacred reliquary, having been removed and the shrine torn down, lay hidden in the darkness beneath the ruins for a long time. — However, the memory of this sacred treasure was not forgotten by the Spanish people. In the early part of the ninth century, when King Alfonso, who was called the Chaste, held sway over Spain, and Theodemir had been appointed Bishop of the road to Iria Flavia, a remarkable thing occurred. Over the crypt, which contained the relics of Saint James and two of his disciples, a brilliant star appeared, as if fixed in the sky, which shone with such brilliance that it indicated the place where the sacred remains had been buried. Bishop Theodemir, so fortunate by this auspicious sign, offered prayers to the author of this grace, and then, after removing and clearing away the ruins of the old shrine, he discovered it, where, as if in a familiar tomb, the bodies of three saints lay in separate niches. Then, so that this place, now sacred, might be protected by human means, a wall was built around it, and the sacred treasure was surrounded by strong foundations.

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When these events reached the ears of King Alfonso, he immediately went to venerate the tomb of the Apostle, and he ordered the old shrine to be restored from the ground, and he commanded that the land surrounding it, extending three thousand paces, be perpetually assigned for the maintenance of the temple. Meanwhile, the city near the crypt, which had previously been called Iria Flavia, took the name Compostella, inspired by the sight of the shining star. — But to illustrate the Apostle's tomb, besides this heavenly sign, many divine things occurred, so that people came to pray at the sacred remains not only from neighboring cities and towns, but also from distant places. Therefore, King Alfonso III, following the example of his predecessor, began the construction of a larger temple, but he took care that the ancient reliquary remained untouched, and he embellished the area around it with great expense. At the end of the tenth century, the fierce Arab forces, having again invaded Spain, plundered many towns, and, with a great slaughter of the citizens, devastated everything with fire and sword. The most infamous Emir Almansor, who had not been unaware of the veneration of the tomb of Saint James, had already intended to destroy and tear down the shrine; and he believed that if he could accomplish this, he would conquer the greatest bulwark of the Spanish, and in which lay all their hope. Therefore, he ordered those whom he had placed in command of his troops to proceed directly to Compostella, to adore the city, the temple, and all the sacred things.

[*Latin ed. p. 265*]

LETTERS 265 should be consigned to the flames. But God extinguished the already begun and raging fire at the threshold of the presbytery, and He struck down the Almoravid and his troops with terrible blows, so that they retreated from Compostela, and almost all of them, along with the Almoravid, perished suddenly. — There still remained scattered around the crypt, remnants of the enemy's ferocity, a testament to divine protection. From these evils, when did Spain emerge? The Bishop of Compostela, Didacus Pelaez, within the very ruins of the old temple, began to erect a larger building, which was later, by the Bishop Didacus Gelmirez, endowed with a more splendid cult and majesty, and given the name and status of a Basilica. The principal concern of this Bishop was to identify the sacred relics entrusted to him, and to place them in an inaccessible niche, elevated on a high wall. While doing so, he did not hesitate to detach a small fragment from the sacred bones, and he sent it as a gift, along with a letter, to the holy Bishop Atton of Pistoia. This fragment, as has been determined by modern experts, was taken from the head: it is the part known as the mastoid process, still stained with blood, as if it had been struck by a sword, when the head was severed from the body. These relics are still venerated with singular piety by the Church of Pistoia, due to their fame for miracles and the ancient religion of the citizens. — Meanwhile, the fame of the

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Spanish sanctuary spread far and wide, and countless crowds of pilgrims from almost all parts of the world flocked there, and the frequency grew so much that it was rightly compared to the large numbers of pilgrims who went to the holy places of Palestine and the tombs of the Apostles Peter and Paul. Therefore, the Roman Pontiffs, our predecessors, accepted the dispensation of the vow to undertake the pilgrimage to Compostela, and reserved it for the Apostolic See. In the nearly completed sixteenth century, a fierce and terrible storm arose, which raged throughout almost all of Spain, and the sacred tomb of the Apostle was in danger, not only from external forces, but also from internal ones. Because of the war declared between the Spanish and the British, those who had descended from the Catholic faith into heresy had resolved to plunder and destroy the churches of Catholics, and to violate and destroy all sacred things. Therefore, in Galicia, a region bordering the sea, with an exposed army, they overturned sacred buildings, burned the images of the blessed, relics, and everything else that was considered holy, and then, in order to extinguish what they called the pernicious superstition, they marched towards Compostela. — At that time, the pious Archbishop of Compostela, John, of Saint Clement, presided over the Church of Compostela, who, after consulting with the Canons, took measures to safely place the sacred relics of the Saints in a certain place.

[*Latin ed. p. 266*]

266 Letters were written, and he undertook this particular task concerning the relics of Saint James. But since the enemies were already pressing in, he secretly buried three bodies in a hidden place. However, he took care to have a new repository constructed from the ruins of the old one, built in the Roman manner, so that some remnant might survive to bear witness to their identity for posterity. After the cessation of hostilities and the dangers of war were averted, the citizens of Santiago de Compostela, and the pilgrims who frequented those places, were certain that the sacred remains were still in the same place where they had originally been laid to rest. However, later generations held to this belief, so that in our time it is believed that the faithful keep the same sacred relics in the apse of the main sanctuary, and therefore they approach that place more closely to adore them, and the clergy of the Basilica conclude the daily prayers there with the singing of antiphons. When our Venerable Brother, the Most Reverend Cardinal Paya'Rico, the present Archbishop of Santiago de Compostela, undertook some years ago to restore the Basilica, he conceived a plan, which he had long held in his mind, to investigate the place where the relics of Saint James, and of his disciples Athanasius and Theodorus, were located. Therefore, he delegated the task to the most skilled men, constituted in ecclesiastical dignity, to direct the workers. But, contrary to all expectations, things turned out differently. After the entire under-

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ground area and all the crypts that still exist around the main altar had been explored, nothing was found. Finally, as greater and greater devotion drew the clergy and the people to prayer, in the very center of the apse, behind the main altar, and in front of another inner altar, the floor was excavated, and when the work had progressed to a depth of about two feet, a chest was discovered by the workers, on whose lid a cross was carved. The chest was made of stones and sides taken from an older crypt and tomb. After the lid was removed in the presence of witnesses, bones were found belonging to three skeletons of the male sex. Concerning all of these, our Venerable Brother, the Cardinal Archbishop of Santiago de Compostela, after hearing the advice of pious and learned men, and after considering the opinions of the most expert scholars, prepared procedural documents, and it was investigated whether the relics found were indeed those of Saint James the Greater Apostle and of his two disciples, Athanasius and Theodorus. Considering all of this in accordance with the precepts of ecclesiastical discipline, and using sound judgment, he approved and confirmed it. Then, the same Venerable Brother, the Archbishop of Santiago de Compostela, sent us all the proceedings and his judgment, and he humbly requested that the same judgment be confirmed by the supreme authority of Our Apostolic See.

[*Latin ed. p. 267*]

Letters 267. We, receiving your petitions with benevolence, and knowing well that the venerable tomb of Saint James the Greater can rightly be considered among the most celebrated sanctuaries, which are venerated by Christians throughout the world and where pilgrimages are made to fulfill sacred vows; and knowing that it has been adorned with privileges and honors by our predecessors, Paschal II, Callistus II, Eugene III, Anastasius IV, and Alexander III, through their constitutions; we have desired that this matter be treated with the diligence that the Apostolic See has always accustomed to apply. Therefore, from the Sacred Congregation for the Preservation of Sacred Rites, we have appointed several Cardinals of the Holy Roman Church, namely Dominic Bartolini, Prefect; Raphael Monaco La Valletta; Miecislaus Ledochowski; Aloysius Serafini; Lucida Maria Parocchi; Angelus Bianchi; and Thomas Zigliara; and also, from the same Sacred Congregation, we have chosen distinguished officials, namely Vincent Nussi, Apostolic Prothonotary; Lawrence Salvati, Secretary for Records; Augustine Caprara, Promoter of the Holy See for matters concerning the honors of the blessed; together with Aloysius Lauri, Assessor; to whom we entrusted the examination of this matter. After a meeting held in our Vatican residence on May 20th of the current year, in which all those concerned were summoned for a thorough investigation, a response was given, which was delayed, and which was in accordance with the opinion expressed. The opinion was that certain observations of greater importance should

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be carefully considered. To ensure that this matter would be brought to a conclusion expeditiously, we ordered our esteemed son, Master Augustine Caprara, Promoter of the Holy Office, to proceed to Santiago de Compostela, to examine, inquire, and report on all matters there. After hearing witnesses, whom he had previously required to take an oath; after resolving certain contradictions that appeared in their accounts; after examining experts in archaeology, history, and anatomy from Rome and Santiago de Compostela, who would express their opinions on the matter; after inspecting the remains of the older enclosure and comparing them with those with which the ark containing the relics was constructed; and after examining the place under the apse where these were found; and after again questioning experts in physics about each part of the sacred bones, he returned to Rome and, having diligently performed the task entrusted to him, presented a detailed report. Therefore, on July 19th of this year, the same Cardinals assembled in the Vatican, and after discussing the doubts and with the light of truth shining clearly, a decision was reached regarding the proposed question: "Whether the opinion given by the Cardinal Archbishop of Compostela regarding the identity of the relics found in the center of the apse of the main basilica of that city, as belonging to Saint James the Greater, Apostle, and his disciples, is to be considered valid."

[*Latin ed. p. 268*]

268 Letters from Naples and Theodore: "Are these to be considered authentic, and does the evidence support the claim being made?" Our beloved Sons, the Cardinals, and the Official Prelates, having considered all that had been proposed, found them to be so true and well-proven that it was impossible to refute them, and therefore, certain knowledge of the matter was present, which, according to the sacred canons and the Constitutions of Our Predecessors, the Supreme Pontiffs, is required in these matters; therefore, they replied as follows: "Affirmatively, that is, the judgment is to be confirmed." When this was reported to Us by Our beloved Son, Cardinal Dominic Bartolini, Prefect of the same Congregation of Sacred Rites, We were greatly pleased; and with all our heart, We gave thanks to God, the Most High, to whom it pleased that His Church, especially in these times of great injustice, should be enriched with this new treasure. Therefore, in accordance with the aforementioned judgment of the special Congregation of Sacred Rites, We readily accepted and confirmed it in all respects. Furthermore, We ordered that on the 26th of July, the feast of Saint James the Apostle, Our decree of confirmation be publicly proclaimed in the church of the Nation of Spain, Santa Maria de Monte Serrato, in the City, after the reading of the Gospel from the pulpit, in the presence of Our beloved Son, Cardinal Dominic Bartolini, Prefect of the Congregation of Sacred Rites, and Our beloved Sons, Master Lawrence Salvati, of the acts, Augustine Caprara, Inquisitor of honors celestial,

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together with Aloysius Lauri, Assessor, and John Ponzi, for the archives. Now, wishing to communicate, with a more solemn document of Apostolic authority, and with a new act of Our confirmation, those things which have been established by the aforementioned decree, following in the footsteps of Our Predecessors, namely Benedict XIII, Pius VII, and Pius IX, who gave judgment on the identity of the bodies of the saints, Augustine, the Doctor of the Church, Francis of Assisi, Ambrose, the Doctor of the Church, Gervasius and Protasus, martyrs; We also, having dispelled all doubts and controversies, approve and confirm, with Apostolic authority, the judgment of Our Venerable Brother, the Cardinal Archbishop of Compostela, regarding the identity of the sacred bodies of Saint James the Greater, the Apostle, and of his holy disciples, Athanasius and Theodore, from certain knowledge, and We decree that it shall be firm and valid forever. Furthermore, We wish and command that no one be permitted to separate, remove, or transport, under pain of excommunication, the sacred relics, which are already deposited in the old repository and sealed, or any part of them.

[*Latin ed. p. 269*]

LETTERS 269 concerning the granting of indulgences, the absolution of which We reserve entirely to Ourselves and Our Successors. Therefore, We command and enjoin all and each of Our Venerable Brothers, Patriarchs, Archbishops, Bishops, and other Prelates of the Churches, to solemnly publish these letters in their respective provinces, dioceses, and cities, in the manner that they shall deem most fitting; so that the most auspicious outcome of this may be manifest everywhere, and that all Christians may celebrate it with increased devotion, and undertake sacred pilgrimages to that most holy sepulcher, as Our predecessors have been accustomed to do. — And that We may more effectively obtain the patronage of the most holy Apostle James and his disciples for the Holy Church of God and for the entire Christian republic, We grant, with the fullest benevolence in the tenor of the present document, to all and each Christian of both sexes, who, truly contrite, shall confess before the Ordinary of the place to be chosen, and who shall be nourished with the Body of Christ in temples dedicated to the Apostle James, wherever they may be, or, if such are lacking in any place, in temples designated by the Ordinaries, that for the most urgent needs of the Church and for its exaltation, for the eradication of heresies and of impious sects, imploring the intercession of Saint James, they shall pour forth pious prayers to God, and that they shall receive a plenary indulgence and remission of all sins, which, by way of suffrage, may also be applied to the souls detained in the flames of purgatory. And since the most noble Spanish nation has preserved the integrity and inviolability of the Catholic faith through the miraculous help of Saint James, that God, the merciful One, may grant it grace, for which reason, amidst so much confusion of errors,

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it may have its spirit strengthened by its Patron, through whom it seeks holiness of religion and devotion, We grant a most ample privilege, which was granted to it by Our predecessor Alexander III, namely, a plenary Jubilee for that year in which the feast of Saint James, which falls on the 25th of July, coincides with a Sunday, and also for the coming year, since on that same day the sacred solemnities of the discovery and elevation of his body will be celebrated, observing the same method and with the same faculties as contained in the Constitution of the aforementioned Supreme Pontiff, dated the 25th of July of the year 1579. These letters, and everything contained in them, shall never, at any time, be noted, impugned, or declared void or invalid by reason of any defect or intention of Ours, or by any other defect, but shall always and forever remain valid and efficacious, and shall have and obtain their full and complete effect;

[*Latin ed. p. 270*]

270 We desire that these [documents] be considered by all, of whatever rank, order, prominence, and dignity; and we command that, even though they are copies, and though they bear the hand-written transcription of a public Notary, and are secured with the seal of a person constituted in ecclesiastical dignity, the same faith be given to them as would be given to the originals themselves, if they were exhibited or shown. Therefore, it is not permitted to any person whatsoever to infringe this page of Our approval, ratification, reservation, concession, relaxation, commission, and will, or to dare to contradict it with reckless audacity. If anyone should presume to attempt this, let him know that he will incur the indignation of Almighty God and of the blessed Apostles Peter and Paul. Given at Rome, at Saint Peter's, in the year of the Incarnation of Our Lord one thousand eight hundred and eighty-four, on the Kalends of November, in the seventh year of Our Pontificate. C. CARD. SACCONI, SECRETARY. F. CARD. CHISIUS. VISITED BY THE CURIA, I. DE AQUILA, AND HIS COLLEAGUES. Place)$Í Plumbi Reg. in Secret. Brevium. I. CUGNONIUS.

[*Latin ed. p. 271*]

271 FROM S, THE CONGREGATION OF THE COUNCIL OF TIBURTINA, CONCERNING MARRIAGE, dated March 10, 1884. SUMMARY OF THE CASE. Through the arts and instigation of her mother, Pascha, who was approximately fifteen years old and already pregnant, entered into marriage on November 9, 1872, with a certain young man, Dominic, aged twenty-two, in the Church of St. Michael the Archangel. Since numerous witnesses are involved and contradictions arise, the truth of the facts appears to be somewhat obscure from the proceedings. It is asserted that Pascha refused to fulfill her marital duties the night following the marriage, and that she was compelled to do so by her parents and her husband, after quarrels and beatings; which the husband denies. However, they did

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not have any children from this marriage; for the son who was born was conceived from a previous illicit relationship, and both spouses confessed this. They lived together for four years, sometimes in Castro Saraceni, and sometimes in Rome, where the woman, meanwhile, was occupied with adulterous affairs, unknown to her husband, if one believes him; or, according to the woman, instigated by him himself, if her testimony is to be believed. From these quarrels and disagreements, the spouses separated, and the man returned to his homeland, while the woman remained in Rome, until October 10, 1878, when she went to the Tiburtina Curia, stating that she had been married to Dominic, especially through the influence of her mother; but that the marriage was consummated without her consent. Thus, she continued, if she had consummated the marriage and lived with the supposed husband, it must be attributed to coercion and violence. Therefore, she requested that the aforementioned marriage be declared null, due to the lack of consent, arising from force and fear.

[*Latin ed. p. 272*]

272 TIBURTINA. Before the tribunal of the Curia, duly constituted, a woman, having received a valid document, added to her oath of fidelity that she had always rejected the marriage with Dominic, which had been offered to her by her mother. When questioned by the parish priest as to whether she freely desired to enter into marriage with Dominic, she is said to have replied, weeping, that she certainly did not. At that time, the parish priest, having spoken to Dominic, asked him, "What do you say?" and he is said to have replied: "Go on with your ministry." And she stated that she had answered affirmatively only to the second question posed by the parish priest. The man, for his part, testified under oath: that the woman's mother had proposed her daughter to him for marriage; but that the daughter had never promised herself to him. He continued: "Before the marriage was entered into, I did not know of the woman's reluctance; and in the act of marriage, I responded first, and she responded afterward." After the marriage was entered into, and after dinner with the woman's parents, we requested to go to our home; where the consummation took place, and where we have lived together with the woman for four years. The woman's mother, having been summoned for examination, testified that she had proposed the marriage of her daughter to Dominic; but that the daughter had always refused, from the very beginning. Then the mother continued: "In order to persuade my daughter to the marriage, I used harsh means; and I did not lack threats of driving her out of the house." Regarding this matter, I believe that my daughter was not fully free to enter into this marriage. The woman's father stated that he had not imposed any coercion on his daughter, nor did he know if anyone else had done so. The woman's relatives testified that they knew that the mother had arranged this marriage. However, the witnesses examined on the man's side were almost all

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ignorant of any grounds for the nullity of the marriage. The parish priest, having been summoned for examination, affirmed that both spouses had clearly and freely given their consent; and that all doubt of coercion had been absent, which could have been inferred from the preceding events. Nevertheless, the parish priest's testimony, perhaps due to a lapse of memory, often appears to contradict the facts; so that many things recounted by him have been denied by the spouses, or by other witnesses. He also testified that before the...

[*Latin ed. p. 273*]

At Tivoli, the ecclesiastical court received the sacramental confession of a married couple, which the bride vehemently denied. After conducting such interrogations, which were not entirely appropriate for the preceding circumstances, and considering the difficulties that prevented other witnesses from appearing again, and taking into account other circumstances, from which it was clear that any further delay would be almost useless and inopportune; the episcopal court decided to bring the proceedings to an end by a final judgment, declaring that such a marriage was and is null, due to coercion and fear, unjustly imposed to extort consent for the same marriage. However, regarding the son, who was born after Easter, as stated in the records, we wish to preserve all his rights of every kind and species, and to allow him to bring the case before another court, if he so desires. Therefore, Pascha, wishing to enter into new nuptials, humbly petitioned the Sacred Congregation to take up the case in the appellate stage and to confirm the episcopal judgment, having learned the truth of the matter. The case was presented economically, along with the opinions of a theologian and a canonist, a summary of which we provide.

SYNOPTIC DISCUSSION

OPINION OF THE THEOLOGIAN.

It is certain, he said, that absolute coercion and fear, especially when such fear has been unjustly imposed from the outside, and indeed to extort consent for marriage, of themselves render the subsequent marriage entirely invalid. It is also possible that even reverential fear, if certain circumstances are present, can have this effect, such as the fear of a serious loss, threats, importunate prayers, to which another person, especially with those present, could hardly object, or any other serious circumstance of this kind. In such cases, the marriage would certainly be void, as stated in the Acts, Volume XVII, page 18.

[*Latin ed. p. 274*]

274. In the case of TIBURTINA, there is a lack of consent; and this, ac-

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cording to Saint Thomas, is according to the law of nature, and according to others, according to positive and ecclesiastical law. Whatever is truly done by force or by grave fear cannot in any way be said to be done freely, that is, with true consent: Alexander III, Cap. concerning betrothals. "There is no place for consent where fear or coercion intervenes." With these premises, the Consultor stated that it must be inquired whether, in this case, all those things are present which are required for that impediment, by which force and fear are said to invalidate marriage. Light is shed on the matter from the procedural acts; for, especially from the testimonies of witnesses, it is clear that this marriage was fully and solely carried out by the mother, Pascha, from beginning to end; who, in order to achieve this, employed repeated persuasions and threats; and that these arts, persuasions, and threats were directed solely by the mother to compel the daughter to the same marriage. This, the Consultor deduced from the testimony of Pascha, concerning whose sincerity there is no room for doubt, from the testimony of Dominici, the mother of the girl, and from the testimony of other witnesses. With these things established, the Consultor said that it can be said that in this marriage, true consent was entirely lacking on the part of Pascha. For, it follows from what has been said that the woman did not consent, since the mother was the sole cause of this marriage, contrary to the repeatedly expressed will of the daughter, as is clear from the testimonies of Pascha, her mother, and other witnesses. Therefore, the Consultor argued that in the marriage in question, fear, at least a grave one, was present from an external source; unjustly imposed, and indeed, to extort consent to the marriage; and therefore, the marriage itself is entirely null due to the lack of consent. There is no need to require entirely valid arguments and conclusive proofs when it is a question of annulling some marriage, otherwise duly contracted. However, if there is doubt about consent, the situation is very different; for, if it can be proven, even from the testimony of individuals, that...

[*Latin ed. p. 275*]

TIBURTINA 275. Given the deposition, that the marriage was annulled by force or by grave fear, there remains no doubt that such a marriage should be considered annulled by lack of consent. It would serve no purpose to object, for the girl, as the Parish Priest himself reported, and other witnesses attest, responded during the actual celebration of the marriage; but the woman herself openly denies this in the first interrogation. If, however, she responded in the second interrogation, she did so out of fear of Dominici himself, as she confesses. But even if it is conceded that the girl responded in the first interrogation, can it be gathered that she thereby gave legitimate consent to this marriage, that is, that she freely and truly, with a single word, gave her internal consent to this very marriage? But contrary to this are the continued pressures from the mother, who accompanied

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her daughter up to the very act of the celebration. Therefore, it does not seem to be the case that there is any basis for legitimate and true consent to this marriage on the part of the woman. Indeed, this is the most important point to consider, for, according to the Doctors, marriage is perfected solely by consent, and this consent, undoubtedly, cannot be found where fear is present, preying upon a steadfast man. On this matter, Coscius de separatoris L. 1, c. 8, n. 93 says: "To annul a marriage, which signifies the union of Christ with the Church, which is founded on free and voluntary love, not on coercion, it is sufficient that there be fear, greater than in other contracts, because of the greatest freedom of the will that is desired in it." Since these things are so, and since in the present case it is sufficiently clear that fear, at least to a grave degree, was present on the part of the girl; and since there are not only two, but several witnesses, who consistently testify to this fear, it seems that there is no doubt about the nullity of the marriage. OPINION OF THE CANONIST. He says that it must be inquired whether, in fact, fear was instilled in the woman, and not only an unjust fear, but also a fear that preys upon a steadfast man; whether the woman who suffered this fear consented to the marriage in such an external and coerced manner that anyone should be excluded from considering her consent valid.

[*Latin ed. p. 276*]

276 In Tivoli, the senses are internal and free; whether indeed all those external circumstances are lacking, from which a voluntary consent might in some way be presumed; finally, whether all those things which are brought forward to the contrary can be satisfied by plausible reasons. But that all things should be resolved into an affirmative judgment, the acts of the process indicate. For not only the witnesses, but also the very motive for "that marriage" demonstrate this; for the mother of the most devout Paschalis had observed that Dominic was her only son, and that he possessed some property. Hence, in order to improve the family situation, she devised this marriage, and she endeavored to extract the daughter's consent first through persuasion, and then, when the daughter resisted, she threatened her, so that she would know that, unless she consented to the marriage, she would be rejected from her own paternal home. And she said these things in such harsh words that the girl, after the marriage was contracted, exclaimed: "My mother pressed me like a tigress." Indeed, the mother, not only by herself, but also through others, caused the daughter to be led to this marriage through threats and terrors. And all of this happened to a girl of fourteen years, who had no means of supporting herself, utterly deprived of all help and all counsel; to whom, therefore, no other option remained than either to enter into marriage, or to perish from hunger. Hence, it is clear that the girl was truly afraid, and indeed unjustly, but also that the fear was of such a nature that she would fall into a husband. To the point, Spellerus writes in *Decisiones Facultatis

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Canonicae*, 75, n. 62: "It cannot be denied that if threats are added to the reverential fear, then a just fear arises, leading to a marriage with a man." Having established the existence of a just fear, the Consultor inquired whether the woman, having been thus coerced and passively subjected to the influence of this fear, had given any consent whatsoever, internal, voluntary, and free. To better understand this, he distinguished the times that preceded, those that followed, and those that were the consequence of the very marriage itself. And with regard to the times that preceded, we find that the daughter...

[*Latin ed. p. 277*]

At Tivoli, number 277, she stood firm like an adamant fortress against her mother, who pressed upon her like a fearsome tigress. Regarding the circumstances surrounding the marriage, the Consultant observed that the young woman, while proceeding to the Church, must have inwardly envisioned her future unhappiness, as she was being forced to enter into a life together with a man to whom she was bound by no affection. Consequently, a disturbed imagination caused her to exaggerate her inner turmoil, foreseeing certain calamities, the loss of peace, the frustration of a love she was then cultivating with another young man whom she deeply loved; struck by these terrors and with a sinking heart, she answered "no" to the second question from the priest, after having initially answered "no." Since there is no doubt about the young woman's truthfulness, two operations must be recognized in her, to explain what occurred in the act of marriage, and to reconcile Pascha's account with the testimonies of witnesses. Through one operation, which is internal and imaginative, the young woman inwardly rejected what she truly did not want, and with her mind repudiated it; through the other, which is external and real, she was compelled to will what she was forced to accept, expressing it with words spoken out of fear. Therefore, who will say that the young woman freely and voluntarily consented to the marriage, in her innermost being? All of this is confirmed by what followed the marriage. Indeed, from the very first day that they were seen together, until the last day when they were separated from each other, Pascha and Dominicus never displayed any mutual or marital affection. And although they met on several occasions, no child was born: and there was no care for any offspring? It is universally accepted that, just as physical impediments can render the act of copulation fruitless, so too can moral conditions. Aversion of the mind, abomination, antipathy, or even a moral frigidity, which, although present on the part of the woman, is sufficient to render a physically capable union barren and ineffective. From this, the Consultant concluded that, if all things are considered together, if the

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antecedents and consequences are compared with the facts themselves...

[*Latin ed. p. 278*]

278 Near TIBURTINA, with accompanying witnesses, the conclusion arises that the consent given by the girl was not free from the influence of the fear instilled by her mother; therefore, it cannot be considered a true and effective consent. The Roman Rota, in its decision dated August 8, number 33, states: "Indeed, in marriage, simple consent is not sufficient, but full security and freedom are required." Considering these points, the Consultor stated: Three things are evident in this case: namely, that the girl was subjected to an unjust and serious fear in order to extort consent to the marriage; that the consent given was truly given under the influence of that same fear; and that nothing is found in the girl's actions from which voluntary consent can in any way be presumed. Finally, after the Consultor had addressed the difficulties arising from the very acts of the process, he concluded in favor of the nullity of the marriage. OBSERVATIONS OF THE DEFENSOR DE VINCULO. This man stated that the marriage was contracted in facie, that is, publicly, after three announcements, before the Parish Priest and legitimate witnesses. From this, it follows that the marriage cannot be declared invalid due to fear, unless conclusive proof of the fear precedes it; Roman Rota, decision 763, number 1, section Seraphim. However, the burden of proof of this fear lies with the girl; that is, she must demonstrate that the fear was instilled in her, not in a general way, but specifically, and with the accompanying circumstances related to the act. But in this case, there is no conclusive proof that the marriage was contracted due to fear; rather, there are many things that completely suggest the contrary. For none of those who should have observed the force and fear that were present, found anything from which they could infer that the girl did not celebrate the marriage freely, but under compulsion. The man himself stated that both he and the girl freely answered the Parish Priest who asked about their will; nor did the girl show any agitation while they were going to the Church for the marriage. "If I had seen the woman's opposition on the way," the man said, "I would have left her without hesitation."

[*Latin ed. p. 279*]

TIBURTINA 279. The father of the girl, who was able to ascertain the facts, confessed that he had not imposed any coercion, nor did he know that anyone had imposed any. The parish priest, whose testimony is to be given great weight, testified that both parties freely and clearly gave their consent, and that he saw no sign of hesitation, nor did he see the woman weeping; other witnesses testified likewise. Furthermore, there are other indications that should not be disregarded, which exclude any suspicion of coercion. Indeed, the very Easter season, together with Dominic, prompted

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the parish priest to hold the solemn announcements concerning their marriage. And although she denies this, her denial is proven false, both by the parish priest and by another witness. From this, the defender argued: everything proves that the marriage was celebrated freely and spontaneously; and the woman, upon whom the burden of prestige rests for the contrary, has presented only indications or testimonies, which, however, the consultant has declared to be of no value. But I ask, even if all these things were true, the principal condition, which is the gravity of the fear, is lacking. For, in law, fear instilled by parents is scarcely, if at all, considered serious and effective enough to disturb the choice and to invalidate a marriage; *Sperelli decis. 75 n. 15, 16*. After stating that such fear is required, he continues: "But such a fear" does not seem to be the fear of the daughter of the mother's anger; which is not included "in the body of the law, as the statutes and the code state concerning those things which are done by force or by fear, ibid. tit." And on the point that "the fear instilled by the mother is not sufficient to invalidate a marriage," Burgos, *de Paz*, states that they give this reason, "because women are less to be feared, since they are less daring and weaker." Who will consider the mother's reprimands as a serious cause of fear? But that the mother should stand before her daughter like a tigress, this is a hyperbole, since it is known that the mother did not even touch her daughter. Since these things are so, this fear must be considered as a dream of a feeble mind; from which the woman has lost all shame, along with her virginity. Furthermore, mi-

[*Latin ed. p. 280*]

280 Near TIBURTINA, if any matters pertain to the expulsion from the paternal home; but such a threat ought rather to provoke laughter than fear in Pascha, since she knew that the mother was not able to carry it out. With these and other things preceding, the purpose was to explain the doubt concerning whether the judgment of the episcopal court should be confirmed or overturned in this case. RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter on May 10, 1884, decided to respond: The judgment is to be confirmed. From WHICH ARE GATHERED: I. Since marriage signifies the union of Christ with the Church, which was made through free love, therefore, this sacrament ought to be represented by free consent. II. But free consent is absent whenever fear or coercion intervenes: for true consent is clearly lacking where the greatest freedom is not present. III. It is just that fear should arise, which is said to fall upon a steadfast man, if reverential fear is joined with threats against him, to whom reverence is due. IV. Regarding the matter of reverential fear by which liberty can be said to be harmed, it was deemed not to have been sufficiently proven; hence, the Fathers responded that the judgment of the court, which had stood for the nullity of the marriage, should be overturned.

SYPONTINA BORDER OF PARISHES. On June 12, 1884. A single parish

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and collegiate church, dedicated to St. Peter the Apostle, existed until the year 1855 in the town of Monte S. Angelo, in the Syponte Diocese. However, COMPENDIUM OF THE FACTS.

[*Latin ed. p. 281*]

The number of the faithful in SYPONTINA had increased greatly, so that the Archbishop Tagliatela, in order to better provide for their spiritual welfare, decided to erect a new parish, dividing the old one within the Church of the Blessed Virgin of Mount Carmel. Therefore, the Archpriest Vaira, after being requested, agreed to the division of his parish, under certain conditions, commonly called reservations, and also described the boundaries of the new parish. The Ordinary approved all of this through a bull of erection. Less than twenty years had passed when a dispute arose regarding the exercise of jurisdiction and the performance of funerals between the parish priest of the new parish and the Archpriest and Chapter. To resolve this dispute, the aforementioned Archbishop was presented with the following questions: whether the Church of Saint Joseph should be considered to belong to the mother church or to a dependent church, according to the aforementioned description of boundaries; whether, by virtue of the reservations, the Chapter could perform funerals in churches that belong to the dependent church, and whether they could transfer bodies from those churches to the cemetery under their own cross. The Archpriest, by decree of January 23, 1874, responded: that the Church of Saint Joseph belongs to the mother church, and that the Chapter has the right to perform funerals in that church and to transfer bodies from it to the cemetery under its own cross. It appears that matters proceeded peacefully until the year 1882, when, after January Roberti obtained the mother parish, and Franciscus Falcone succeeded him in the dependent parish, the same disputes arose again. The Archbishop Feuli made efforts to resolve these disputes in a just and equitable manner, but without success. During a visitation of the diocese on May 17, 1883, he issued a decree in which he declared his own incompetence to reform the decree issued by his predecessor; but, while confirming that same decree, he declared that the Church of Saint Joseph belongs to the mother church, and that the village of Tapparone is part of its territory, and granted the parties the power to appeal to the Sacred Congregation. He declared that this decree should have full force and effect until it was revoked by the Apostolic See, or until the decree of January 23, 1874, was reformed, and to the parties, this.

[*Latin ed. p. 282*]

282. To those who refused to submit to the decision of the Synod, he threatened suspension from divine functions, which would be incurred by such an action. Considering himself aggrieved and harmed, Francis Falcone, pastor of the filial church, on June 2, appealed to the Sacred Congre-

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gation of the Council, citing both the decree of 1874 and another of 1883. The dispute concerned the rights of the filial church. He who defended the rights of the filial church maintained that both decrees were of no weight, and he presented three arguments to demonstrate this. The first was derived from the words of the bull of dismemberment, the second from the fact that the pastor of the mother church had peacefully possessed both the church of St. Joseph and the village of Tapparone until the year 1883, and the third from the fact that the decree of 1874 was issued based on a false assumption and without hearing the pastor of the filial church; furthermore, the decree of 1883 was unjust because it contained a contradiction.

Therefore, presenting his first argument, he recalled that the Archbishop, before issuing the bull of dismemberment, had sought the consent of the pastor of the mother church, who had designated the boundaries of the new parish. This description of the boundaries, the advocate stated, was confirmed by the Archbishop in the bull of dismemberment with these words: "We separate from the parish of the aforementioned church of St. Peter all the houses and churches within the aforementioned territory, together with their inhabitants..." Furthermore, since the pastor of the mother church proposed that the church of St. Joseph and the beginning of the village of Tapparone should be two points from which the new territory should begin, and the Ordinary firmly approved, it necessarily follows that both the church of St. Joseph, on the right side, and the village of Tapparone, on the left side, form the beginning of the new parish, and belong to it. And indeed, if the pastor of the mother church had wished to reserve the aforementioned church and village for the mother church, he should have said: "The church of St. Joseph and the village of Tapparone constitute the extreme boundary of the mother parish; and everything that follows will belong to the new parish." Unless, therefore, the description of the territory...

[*Latin ed. p. 283*]

SYPONTINA 283: If it is desired to give force to the words, it must be justly concluded that the Church and the village belong to the new Parish. For the words are most clear, and therefore they must be understood according to their meaning. It must be further considered that the Archpriest Vaira has designated not only the boundaries, but the entire territory of the new Parish, from which it follows that everything found in the aforementioned description belongs to the new Parish. To this is added that the words of the description of the boundaries and the words of the Bull are in perfect agreement with the principles of common law, which require that any house or Church located on the boundary belongs to the Parish Priest in whose territory the entrance is found. Hence the common saying: "Where there is an entrance, there is the house, and there is the Parish." "The parishioner is where the main door is. Where the entrance is, there

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is the house." Indeed, the entrance to the Church of St. Joseph is located on a street that is under the jurisdiction of the filial Parish Priest; therefore, it must necessarily belong to that Parish Priest. This principle has also been confirmed by the Apostolic Letters of Leo XII concerning the new arrangement of the City Parishes, page 17, and from which controversies among the City Parish Priests arose, which the Vicar of the City silenced without clamor. This same thing is known from the common teaching of the Canonists; Barbosa de off. et potest. Episc. part. 2 Alleg. 32 says: "He who dwells" on the boundary between two parochial Churches is considered a parishioner of that Church in which the house has an entrance, as the notable doctrine of Barth, in L 6 in f n. de damno infect.; the reason for this assertion is that the house is judged by the entrance. To this Riccius adds Prax. foren. resol. 410 n. 1. This principle of law has been confirmed on several occasions by the Sacred Congregation, as in one decision from Naples, dated July 20, 1873 (1). Finally, since even the opposing party admits that the Parish Priest of Carmel has exercised jurisdiction both in the Church of St. Joseph and in the village of Tapparone, the Defender argues as follows: Either the Church and the village are within the boundaries of the new (1) This was reported in Volume XVI, page 607.

[*Latin ed. p. 284*]

284 Whether the parish belongs to Syponina or not. If the first, the filial priest would have been using his rightful powers. If the latter, since the church and the village belonged exclusively to the mother church, the priest could not have performed these functions in any way. However, it is a fact that, with the knowledge and consent of the mother church priest, the filial priest exercised parochial functions in the church and all kinds of jurisdiction in the village. From this, it is at least proven that the church and the village did not belong exclusively to the mother church. Indeed, the Patron demonstrates that both belong exclusively to the filial parish, according to the boundaries established by the Archbishop. This is shown by another argument derived from the peaceful possession of the priest of Carmel, who administered all the sacraments to those residing in the aforementioned village. This is evidenced by the testimony of all those residing there, and from the parochial books. This testimony deserves all credibility, not only because of the office they hold, but also because it is in perfect agreement with the entries in the parochial books, which were largely written by the very adversary, Robert. And indeed, with regard to baptisms, forty-four births are recorded in the village of Tapparone from the year 1855 to the year 1883, and all were regenerated by the salutary washing in the new parish. As for deaths, twenty-four were recorded by the adversary, Robert, and one by the Curate Economus during the vacancy of the parish. Finally, eight marriages celebrated by the inhabitants in the aforementioned village are recorded. From these facts, it is clearly evident

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that the parish existed from its erection up to the year 1883. Given these facts, it is clear that parochial books must be given great weight in legal matters. For this is what canonists unanimously declare, and it is confirmed by the practice of the tribunals, especially in those cases that concern births, marriages, deaths, and kinship; in these, parochial books undoubtedly deserve the full faith of a public instrument. Thus, Begnudelli in Bibliot. Iur. id. Canonico-Civili-practica, Verb. Parochia, no. 1, writes: "Parochiality is proven from the baptismal books, from which it appears that 'more were baptized.' Also, from the books of the dead, 'from which it is known that more were buried,' provided that..."

[*Latin ed. p. 285*]

SYPONTINA 285: "These acts were not performed after the dispute had begun." This is fully supported by the Rota apud Rubeum, Decisions, 433, volume 2, part 5, more recent; Maschardus, Volume 2, Conclusions, 612, numbers 18 and 19; and Reiffenst., book 2, title 22, number 127. Furthermore, if it is observed that the parish priest of the mother church never administered the sacraments in that village, it is clear that, in designating the village to belong to the new parish, he intended it to be part of that same parish. It would be laughable, the Advocate said, if this were not a matter of such seriousness, to consider that the parish priest who recorded the acts in the parochial books of the new parish was himself the one who now contends that the aforementioned church and village belong to the mother church. From this, he applies the following statement to him: "What each one establishes as law for another, he himself must use according to the same law." Since he himself, in the past, supported with all his might the claim that the disputed territories should be subject to the jurisdiction of the parish priest of the filial church, his successor, Falcone, at this time, must also do the same. Finally, addressing the third argument, he endeavored to demonstrate that the Decrees of the years 1874 and 1883 have no validity, because the Decree of the year 1874 is based on a false premise and was issued without due consideration; and the Decree of the year 1883 involves a contradiction, indeed an absurdity. And indeed, since the words of the description of the boundaries, the Bulls of dismemberment and reservation, and the very facts clearly show that the church and the village, from the year of dismemberment to the year 1883, belonged to the filial church, it necessarily follows that the Decree of the year 1874 is based on a false premise. Furthermore, since the Decree was issued without the knowledge of the parish priest of the filial church, he considered it to be unissued, and, in particular, he retained the village of Tapparone under his jurisdiction. And rightly so, for he could not be deprived of his possession before having had the opportunity to defend his right. For no one can be condemned unheard, according to the most common principle of law, and acts that are issued without due process are, by law, considered null and

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void. And it is certainly well known that a citation is absolutely necessary for the validity of acts, according to Chapter Ecclesia, de Con-

[*Latin ed. p. 286*]

286 SYPONTINA constitutions; hence, Reiffenstuel, in his *Decretum*, book 2, title 3, on oblation documents, states: "Indeed, a citation is so necessary that, concerning an absent party, it cannot be omitted, and if it is omitted, the judgment is declared null." Therefore, the parish priest, as a representative of the filial church, ought to have been heard in order to protect his rights; otherwise, the judge would have rendered a sentence without knowledge of the cause, as the canonists say. Regarding the necessity of a legitimate defense, the esteemed Reiffenstuel speaks thus in his *Decretum*, book 2, title 26, § 2, numbers 42 and 43: "Nor ought the judge, even in a summary proceeding, to abbreviate the case to such an extent that necessary proofs and legitimate defenses are not admitted, as Clement often says." Indeed, if it appears that a sentence was issued by a judge ignorant of the merits of the case, then that sentence is null by law, since it was issued without knowledge of the cause. However, having admitted this, and considering that the *Decretum* is in force, it necessarily follows that all marriages celebrated by inhabitants of the aforementioned village, at least on the left side, before the filial priest, were entirely null. Therefore, it is permissible to admit only this: that the village in question has always belonged to the new parish, and that the Archbishop, issuing the *Decretum* without knowledge of the cause, and based on a false assumption, rendered it invalid and null by law. Proceeding then to another *Decretum* of the year 1883, issued by the Archbishop of Feuli, the Advocate stated that a contradiction was found therein, which suggests injustice. Having demonstrated above the nullity of the first *Decretum*, it is evident how much weight should be given to the second. For, while the Archbishop declares his incompetence to reform the *Decretum*, 1. he confirms it, and at the same time, expands it, adding: that the village of Tapparone should be considered included in the aforementioned region. 2. While he refers the parties for the resolution of the dispute to the Sacred Congregation, he himself resolves it. 3. While he awaits a solution to the dispute from the Sacred Congregation, he deprives the parish priest of Carmel of his possession over the village. Finally, while he attempts to show that the dispute, without any effort on the part of the parties, leaves the situation as it was before, he himself introduces a change.

[*Latin ed. p. 287*]

SYPONTINA 287: Having considered the matter, one parish priest of the Carmelites is to be subjected to the penalty of suspension, because he has exacerbated the dispute in favor of the parish priest of the mother church. Therefore, if he wished to decide correctly, he should have left the

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controversy in the state in which it was, until the Sacred Congregation of Councils had rendered its judgment on the petition. The Archpriest Patron, even after being warned, presented nothing to defend his rights. Considering these matters, it was proposed to examine the question of whether the decrees of January 23, 1874, and May 17, 1883, are valid in this case.

RESOLUTION. The Sacred Congregation of Councils, having knowledge of the matter on July 12, 1884, decided to respond: Negatively.

FROM WHICH THE FOLLOWING ARE DERIVED:

I. Since no one can be condemned without being heard, therefore, acts issued without the citation of the parties are considered null by law, and the judgment is rendered null.

II. Therefore, even in a summary judgment, it is not permissible to shorten the dispute in such a way that necessary evidence is not admitted, and legitimate defenses are not allowed; otherwise, the judgment is null, because it is rendered without knowledge of the cause.

III. In this matter, the decree of the Tribunal of 1874, confirmed by another decree of 1883, has been revoked by law, because it was issued without the knowledge of the parish priest; who was deprived of his possession; in whose favor are the position of the Church of St. Joseph, and the parish books.

IV. It is a principle of law that any house or church located on the border belongs to the parish priest in whose territory the entrance is located, according to the saying: "Where the entrance is open, there the house and the parish are judged." – The parishioner is where the main gate is. – Where the door is, there is the house.

V. It is certain among canonists and in the Tribunals that parochiality can be proven by baptismal records, from which it appears that many have been baptized, and by records of the dead, from which it is clear that many have been buried; the constant practice of which testifies to this.

[*Latin ed. p. 288*]

288. DOUBTS concerning the authority of the Ordinary with regard to priests who abandon their duties, without the consent of the Bishop, or who refuse to accept a parish. Most Blessed Father, the Archbishop of Toulouse reverently explains that it frequently happens that priests to whom the care of dependent churches has been entrusted abandon their duties, and before the Ordinary accepts their resignation, they return to their own affairs, since they do not possess benefices in the proper sense. Consequently, it happens that many priests lead an idle life, while more parish churches lack pastors. Therefore, the aforementioned Archbishop asks: I. Whether it is permissible for these priests, since they do not hold benefices in the proper sense, to withdraw from their duties without

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first obtaining the permission of the Ordinary? II. Whether, by reason of the precept of obedience, and even with the application of penalties if necessary, the Bishop has the right to compel them to continue in their duties, until he is able to provide for a suitable successor? III. Whether, under the same precept, and with the same penalties applied, the Bishop has the power to compel priests who are vigorous and free from other obligations to undertake the care of such churches, until he can provide for them in another way? On May 9, 1884, the Sacred Congregation of Bishops of His Holiness and the Cardinals Interpreters of the Council of Trent, considering the particular circumstances, decided to respond as follows: To the first question: negatively; — to the second question: affirmatively; — to the third question: affirmatively, with the force of the faculties which, with the approval of His Most Holy Lordship, are granted to the Reverend Archbishop, for a period of seven years, if the aforementioned circumstances persist for so long. L. CARD. NINA, Prefect. I. VERGA., Secretary.

[*Latin ed. p. 289*]

289 FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS OF PALESTRINA, dated March 28, 1884. Joanna Palombi, a widow from Culmore, of the Diocese of Palestrina, having presented a petition, stated to the Most Holy Father: that her two sons had served for five years as clerics or assistants in the church of Saints Peter and Paul in Serrone, of the same Diocese; and that, in consideration of this service, they were to have received 338.62 from the late Reverend Joseph Marella; but that they had repeatedly petitioned the episcopal curia in vain for this sum. Now, however, since the humble petitioner is confined to her bed by a long-standing illness, and is deprived of all assistance, and in order to alleviate her poverty, having set aside all civil recourse, she appeals to the clemency of the Most Holy Father, imploring that the sum due to her be paid, whoever may be the debtor who is obligated to pay it. The Most Eminent Ordinary of Palestrina, having been consulted for information and opinion, reported that the petitioner's requests are in accordance with the truth, and that the sum requested is indeed due to her sons by the late Reverend Joseph Marella.

SUMMARY OF THE FACTS. A concise summary: There remains no doubt, and having considered the matter favorably, it is clear: for the laborer is worthy of his wages. Thus, the murderer is compared to the Holy Spirit, who takes away the bread earned by the sweat of one's brow, as if he were killing his neighbor. He who sheds blood and he who commits fraud are brothers; Ecclesiasticus, chapter 24, verses 20 and 27. Furthermore, there is no question regarding the sum to be paid; but only the question of to whom the obligation falls.

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RIGHTS OF CLERKS. Acts, Volume XVII, page CXOVIII.

[*Latin ed. p. 290*]

290 PRAENESTINA. The Ordinary reported that, according to ancient custom, the ultimate beneficiary of the principality of Colonna was obligated, either by himself or through another, to provide assistance to the church of the archpresbytery of Serrone. However, this obligation appears to have been removed from numerous acts of the Visitation. Therefore, unless it is fulfilled by the beneficiary himself, the services of another would have to be compensated with due remuneration. Furthermore, it was noted that the beneficiary himself had, in fact, provided assistance and compensated the sacristans with due remuneration until the year 1877. Moreover, it is certain that the aforementioned beneficiary had promised, in a legal instrument with the Prince, to fulfill the obligations inherent in his benefice; among these, the obligation to assist the sacristans. Hence, he undertook this obligation from that time; but once it has been agreed upon, it should not be subsequently revoked; *reg. iur. 21 in 6 decret.* CONCERNING THE OBLIGATIONS OF A BENEFICIARY. He observed that the Prince Colonna was not the only patron of the archpresbytery; therefore, if another beneficiary of another patron were to exist, he would be bound by the same law to provide assistance as the last invested. However, he stated, if the matter is to be settled between the parish priest and myself, it is futile for the parish priest to invoke a custom which is entirely devoid of any characteristic of a true custom. For, if someone who holds a benefice, enjoying a more substantial benefice, has previously done something for the benefit of the archpriest, he cannot compel the successors in that benefice to do the same, which the predecessor did out of mere liberality; for the successors are not bound by any law, and the custom cannot be invoked, because there is no law or precept against which the same custom can prevail. Nevertheless, even if it were granted that the law obliges the ultimate beneficiary of the Prince Colonna, it seems unjust that the presbyter Marella should always remain the beneficiary from whom the Prince redeemed the benefices of his own patronage. Rather, the obligation of providing for the sacristans should be imposed upon the Prince; because the redemption of the benefices brought considerable benefit to him; according to the saying: "It is in accordance with nature that the advantages of any thing should accrue to him who possesses it."

[*Latin ed. p. 291*]

Praenestina, 291, presents inconveniences. For it is not tolerable that those who embrace gain should despise the burden attached to it. And if the beneficiary, Marella, promised to fulfill the obligations, this promise refers only to the fixed and perpetual obligations; certainly not to the obligation of perpetually paying a stipend to the benefactor; because

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such an obligation is temporary and ought to cease through death or the resignation of other benefactors. We ought, indeed, to be more inclined to release [someone] than to bind [them]. With these things noted, the following question was posed: Whether the priest, Joseph Marella, is obligated to pay the sums of 338.62, granted by the benefactors Raini, in this case.

RESOLUTION. The Sacred Congregation of Bishops and Regulars, having considered the matter, on March 7, 1884, judged it fitting to respond: Affirmative, and furthermore.

FROM WHICH THESE THINGS ARE GATHERED:

I. The obligations of a benefice must be entirely fulfilled by the beneficiary; especially if he has imposed them upon himself through a special stipulation; for that which once pleased should not afterward displease.

II. Among the obligations of Joseph Marella, there is also the temporary obligation of serving the Archpriestly Church, as a benefactor, either by himself or through another; this obligation was incumbent upon him until he obtained the highest position among the beneficed clergy of the patron, Colonna.

<;>cggsggo<^o AGEN. REINTEGRATION. On July 4, 1884.

COMPENDIUM OF THE CASE. Francis Danjard, a removable parish priest, was removed from the parish of Granges, which had been entrusted to him by the Bishop only shortly before.

[*Latin ed. p. 292*]

292. AGEN. The matter, initiated by the petition of the priest, was brought before the Bishop according to the decree of the Holy See. In the Congregation on March 7, 1884, after the usual presentations from both sides, the following question was put forward: Whether the priest Francis Danjard should be reinstated in the parish in this case. To this question, the Holy Congregation of Bishops and Regulars responded: Negatively. Ten days after such a resolution, the procurator for the Agens Curia petitioned and obtained the execution of the sentence; which, after the appeal had been postponed, had passed into final judgment within the prescribed ten days. The Ordinary, having received a certified copy of the sentence dated April 9, gave effect to the aforementioned resolution, writing to the priest Danjard: "It is not unknown to you that a resolution adverse to you was pronounced by the Holy Congregation of Bishops and Regulars on March 7; therefore, I warn you that from April 21, you will be deprived of all power to perform the sacred mysteries, either privately or publicly, within the territory of Granges and Cuzorn." On April 10, the priest Danjard wrote to the Bishop, requesting that the order of suspension be rescinded, since no notification had reached him regarding the outcome

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of the matter. Furthermore, if a sentence adverse to him had indeed been pronounced, he declared that he would demand a review of the case, which he subsequently did. The Prefect of the Holy Congregation, who had the discretionary power to grant or deny a new hearing, nevertheless considered that the matter should be submitted to the judgment of the Most Reverend Fathers, since he doubted whether the principal matter had been definitively judged. And therefore, he decided that the matter should be presented to the plenary assembly of the Most Reverend Fathers concerning only the matter of the expiration of the appeal. (1) (1) Let the readers note that in this case, the matter is being considered in a different forum, but whether an appeal concerning the reasons for Danjard's removal from the parish can be granted, since the action interposed was not concerning the principal matter or the sentence itself.

[*Latin ed. p. 293*]

AGEN. 293. A Synopsis of the Matter. A NEW HEARING CANNOT BE GRANTED. It has been observed, by virtue of the law, that, according to Roman law, the time limit for appealing in one's own case was two days, and three days in a case involving another person, for whom a legitimate representative appears; I. 1, 2* 5, 6 et 11 ff. when appealing, see leg. 6 §. 5 of the Code on Appeals. Subsequently, the Emperor Justinian, through Novella 23, chapter 1, Authentic, now found in the Code on Appeals, extended the time limit to ten days indiscriminately. However, Innocent III and Boniface VIII applied Justinian's provisions to ecclesiastical cases; therefore, it seems clear that, in canon law, the time limit for appealing is ten days from the day the judgment is issued. Innocent III, indeed, in chapter XV on judgments and res judicata, states: "Regarding consultation, as mentioned below," etc. We have considered it appropriate to respond in this manner: "Since, after a period of ten days, the judgment becomes final and binding, he who, having recourse to the aid of an appeal within that time, does not appeal, is denied the right to appeal, as it appears that he has, through this action, submitted to the interpretation of the law concerning the final judgment; especially when the case is not presented for appeal." And Boniface VIII, in chapter 8 on appeals, decreed: "Whoever, considering himself aggrieved, desires to have the grievance removed through the benefit of an appeal, must appeal within ten days after becoming aware of it, if he wishes to appeal. After that time, the right to appeal will not be open to him. But if he requests the grievance to be removed through a proper contradiction or other legal remedies, provided that he does not consent to it in the meantime, the lapse of the ten days will not be an obstacle." The Decree on the Method to be Observed in Cases before the Sacred Congregation of Bishops and Regulars, September 5, 1834, stipulates in article XI: "The resolution of the Sacred Congregation is delivered in writing and signed in its name, and is given to the Lord Secretary with the necessary signatures." And in

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article 12: "If, within ten days, the losing party...

[*Latin ed. p. 294*]

294 AGEN. "It is again to be heard, concerning the benefit of a *new hearing*." The Relator may deem it fitting to grant this benefit. (1) However, in this case, the appeal was not interposed in due time; for the priest, Danjard, did not know the specific date on which the adverse judgment was rendered in Aversa. But this is his own fault; for the laws assist those who are vigilant, but hinder those who are negligent. If Emus, the proponent, presents a resolution of the questions to the Lord Secretary, informing the parties involved, he does not impose upon them the burden of writing to various parts of the world, in order to ascertain the outcome of a second or adverse judgment. Each party involved in the litigation must obtain certain knowledge of the outcome of the case, so that they may appeal at the appropriate time. Adhering to this principle, the Sacred Congregation has often denied the benefit of a new hearing to those who, for whatever reason, did not interpose an appeal within the proper time. Therefore, in Ferentino, the appeal of March 1, 1881, was not admitted, because the Archpriest appealed after ten days, having been deceived by his agent, who, through error, had written that a favorable judgment had been rendered, when in fact it was adverse. A NEW HEARING SEEMS APPROPRIATE. (2) On the other hand, it has been observed that the canons, in all their provisions, seem to embody a certain sense of equity, especially when the present intention of the appellant is evident; for if he knew that an appeal would be admitted, even if the resolution lacked a certain clarity. Indeed, the Holy Mother Church, mindful of equity, has before her eyes the saying: "Summum ius, summa iniuria" – the highest law, the greatest injustice – and seeks to restrain hatred and to expand favors. And this all the more so because Boniface VIII added this clause to the cited decree after having learned of the situation. The same Sacred Congregation follows mercy rather than rigor, insofar as it has foreseen that from the beginning of the litigation, the proper form of procedure was not followed. An example of this is found in Viterbo, in the appeal of June 13, 1879, in which it was decided that there was no proof of the appeal having been peremptorily rejected. (2) (1) See page 439 of Volume II. (2) See this question on page 631 of Volume XII.

[*Latin ed. p. 295*]

AGEN. 2 95. Nor does the established procedure of the Sacred Congregation for the Council differ; for, according to the circumstances of place, persons, or times, it grants the Eminent Prefect the right to grant an appeal, thereby overturning a judgment deemed improper. Indeed, while Article 21 stipulates that, after the resolution of the case, a new hearing must be requested by the Lord Secretary through a written petition within a ten-

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day period, Article 22 states: If the resolution of the Sacred Congregation is accompanied by a clause and further stipulations, a new examination must be requested by the Eminent Prefect, who, if he deems that he cannot grant it of his own accord, will refer the written petition to the plenary Congregation. (1) Therefore, if this Congregation, which, with equal weight and measure, administers justice in the name of the Apostolic See, grants a new hearing, notwithstanding the clause and further stipulations, it will certainly grant it, even after the ten days, if the judgment is deemed improper. In the case of the Option of Montis Regalis in September 1811, the Eminent Prefect granted a new hearing to the losing party, even though it was requested after one month. Following these precedents, it would seem that this benefit of a new hearing could be granted to the priest Danjard, who, due to financial constraints, could not remain in Rome for long to consider the resolution, and who could not understand why the Sacred Congregation had resolved the proposed question so quickly. With these and other considerations in mind, the purpose was to clarify the following doubt: Whether the benefit of a new hearing should be granted to the priest Francisco Danjard in this case.

RESOLUTION. The Sacred Congregation of Bishops and Regulars, having carefully considered the matter, decided to respond: Negatively, and furthermore.

From WHICH YOU MAY GATHER: I. A judgment, once rendered publicly and officially, acquires the force of res judicata, if within ten (1) See Vol. I, p. 551, Appendix II, concerning the Sacred Congregation for the Council.

[*Latin ed. p. 296*]

296. The number of days shall not be counted by him who is able to count them; for otherwise, it appears that he has agreed to the judgment. II. When the judgment does not expedite the matter so that the entire business can be fully concluded, a finality is imposed on the controversies only by the judgment itself. III. Hence, the question, once extinguished by the judgment, can only be revived by restitution in integrum or by the granting of a new hearing. IV. The Apostolic See, in its dispositions, follows a certain equity; and therefore, even if the ten-day term has expired, it often grants a new hearing; especially if it appears that the appellant intends to present new evidence, and a new opportunity offers hope that the judgment, based on newly presented evidence or for another reason, may be modified. V. It was observed that the person appealing had presented the matter to two Judges, so that a new hearing might be improperly granted for the revision of the judgment, regarding the principal merit, which could not be modified based on the presented and duly proven evidence; especially since nothing new is added, nor does any other legitimate cause exist.

OF THE ORDER OF ALATRI, OR OF THE CARTHUSIAN ORDER, CONCERNING THE VALIDITY OF RELIGIOUS PROFESSION AND

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OF FILIAL OBLIGATIONS. Day 5 of September, 1884. Henry Radente was received as a novice monk at the Carthusian monastery of Saint Lawrence of Padua; Dionysius was chosen as his name, and after a year of novitiate, he pronounced his simple vows. A few, but true, months after such a profession, the civil authority suppressed the Carthusian monastery, and sold its property; as a result of which, the religious men were forced to leave the house. Dionysius, having pronounced his simple vows, was unable to obtain a pension from the government, and therefore, he preferred to seek refuge in another monastery of the same Order.

SUMMARY OF THE FACTS.

[*Latin ed. p. 297*]

ALATRINA, 297. And indeed, this was explained by the Prior of the Monastery of Trisulto, and he received permission and was accepted among the novices of that Monastery. After four years from the taking of his simple vows, he requested to be admitted to the profession of solemn vows, which was granted to him on December 26, 1868, through a secret vote. And by other secret votes in the same assembly, Dionysius was affiliated with the Carthusian Monastery of Trisulto; where on January 25, 1869, he made his solemn religious profession, and where, after being promoted to the sacred orders, he exercised all rights, both active and passive. However, it happened that the new Prior called a chapter, in which he summoned all the members, except for Dionysius; and he gave the reason for this exception, saying: "Dionysius does not belong to the Carthusian Monastery of Trisulto, but to the Carthusian Monastery of Padula." Dionysius appealed to the Apostolic See, explaining whether he belonged to the religious family of Padula, where he had taken his simple vows, which had been suppressed for sixteen years, or to the Carthusian Monastery of Trisulto, where he had solemnly professed after his affiliation.

A Synopsis of the Arguments:

FROM THOSE OPPOSED TO DIONYSIUS:

It was noted against this religious man the decree of the general chapter of the year 1863, in which it is prescribed: "Those who have made profession [of vows], although they may be transferred to other houses, remain forever bound to the house where they made their first profession after the novitiate."

Therefore, by virtue of this decree, Dionysius, who had taken simple vows at the Carthusian Monastery of Padula, remained bound to that house, even though he later took solemn vows at the Carthusian Monastery

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of Trisulto. For, in order for someone to be able to be affiliated with another family, the consent of the chapter from which and to which [the affiliation occurs] is required (Ferraris, *v. affiliatio religiosorum*): "Affiliation" of religious is often used, when frequently religious are transferred, for just causes, with the good will of their superiors, to convents, or monasteries, or to other religious houses.

[*Latin ed. p. 298*]

298 In ALATRI, [the case] differs from those in which the profession was made; a profession which effects true religious affiliation. For this kind of affiliation to be valid, three things must concur, namely, the license of the superior, the consent of the Religious of that community to which the individual belonged, and a similar consent of the Religious of another community, in which the affiliation takes place, as Fontan notes in *ad Constit. Ord. Praedic.,* v. *affiliationes*, n. 4; and Ursaya, *Instit. Crimin.*, book 4, title 7, n. 93.

But in this case, it appears that all were disregarded: for neither the superior, nor any other Religious who were still living, were consulted by the Carthusians of Padula regarding this consent; and this circumstance was perhaps occasioned by the violent suppression of that community, which, however, has no value before the Church, according to canon 64, which states that those things which are done contrary to the law must always be considered as void. For it is not a question of suppressed [communities], but of oppressed [communities]; and those who have suffered from this violence should be considered to have lost nothing of their rights and privileges. Therefore, since the affiliation of Dionysius was made, violating the rights of the Fathers of the Carthusian Order of Padula, it seems that it should be considered as void; because the dispensation of the General of the entire Order did not suffice to remedy the defect.

Regarding the solemn profession, it was noted that it could have been made with doubt, because the scrutiny of the Chapter, through which Dionysius was admitted to the solemn profession, should have been submitted to the General Minister of the Order for explicit approval, which was not done.

FROM WHAT FAVORS DIONYSIUS. It was noted in favor of this case that this solemn profession does not appear to be illegitimate, according to the pontifical declaration of December 9, 1859, which reads as follows: "Those who have made simple vows may lawfully and freely make the solemn vows at the time they desire, in the community or house in which they reside, provided that they observe all other things that are required by law, and they are not required to make their profession in the house where they completed their novitiate."

(1) According to the constitutions, the solemn vows must be emitted in the community of Saint Clement VIII; but according to the law that was

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enacted...

[*Latin ed. p. 299*]

ALATRINA 299. It does not seem doubtful that this profession can be considered valid, because Dionysius made a simple profession in accordance with the spirit of the Constitution of Pius, and, after the passage of time, according to the same Constitution, he proceeded to the solemn profession of the Carthusian Order. The Constitution of Pius IX, dated March 19, 1857, states regarding this matter: "Those who have made their profession after three years, counted from the day on which they made their simple vows, if they are found worthy, shall be admitted to the profession of solemn vows, unless, perhaps, in some places, as has been granted in certain cases, a longer period has already been granted for the simple profession." However, the Decree *Iuniores...* of the year 1863 does not seem to have the character of natural law; therefore, it cannot admit of any interpretation in any case, and in various circumstances. For the cleric Dionysius was not transferred at the will of his Superiors; but, along with other religious men from the Grande Chartreuse of Padula, he was expelled by the civil government, and he offered himself spontaneously to the Convent of Trisulto, where he requested and obtained admission for the exercise of all religious rights. And when the time for solemn profession arrived, it was necessary for him to be received into the profession by the community; because, at least in fact, the Grande Chartreuse of Padula no longer existed, where he had made his simple vows. Therefore, it seems that in this case, Dionysius acted not only because of a necessity that lacks legal basis; but also because the disposition of the Decree *Iuniores* was not in accordance with the conditions prescribed by common law regarding religious profession. For this is defined as: "a promise freely made and legitimately accepted, by which, having reached the due age, after a year of probation has been completed, one binds oneself to a certain religious order approved by the Church." It is clear from this that there are two essential conditions, namely age and a year of novitiate. On March 19, 1857, those who have made their profession of simple vows must remain in the houses of profession and study. Hence, the question arises whether those who have made their profession of simple vows can, in the Convent where they reside, either complete their novitiate or make their solemn profession. To this doubt, the Sacred Congregation of the Holy Office and Regular Canons gave a declaration on December 9, 1859.

[*Latin ed. p. 300*]

30. In Alatri, the matter was discussed in the designated Congregation: all other things are considered accessory, and the act does not invalidate the nullity. Furthermore, it is certain that Dionysius sent a notification to his family estate through the sanctity of an oath, before his solemn profession.

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Therefore, he ought to be treated as a son and to enjoy the rights of a son of that Congregation to which he had dedicated himself, and to which he had given notice of his temporal goods. He cannot be compelled to seek sustenance piecemeal; rather, he must be provided for as a son in that place where he is bound by solemn vows. And it would not be consonant with justice that the vote of the Community of Trisulto be considered valid for the religious profession, insofar as it concerns the obligations to be fulfilled as a religious, but that it have no value whatsoever for affiliation to the same Congregation with regard to religious rights. Finally, it was noted that, although generally, for affiliations, the 'consent of the Congregation from which' is sought, the rule can sometimes be relaxed according to the diversity of circumstances, as S. C. Ep. et Reg. wrote in Albanen on January 20, 1719: "The Holy Congregation, having considered the reports" of the Procurator General and the Procurator of the Order, and "having also considered the special circumstances and reasons," benignly remitted the matter to the judgment of the same Procurator General, so that "he may admit the petitioner to the aforementioned Congregation, notwithstanding the lack of consent from the Congregation from which he came." These matters having been briefly stated, the questions to be clarified are: I. Whether and how the profession of solemn vows of Father Dionysius should be confirmed in this case. II. Whether the aggregation or affiliation of the same Carthusian monastery of Trisulto should be admitted in this case. And, negatively, III. How the petitioner should be treated in the Carthusian Order in this case.

RESOLUTION. The Holy Congregation of Bishops and Regulars, having considered the matter on September 5, 1884, decided to respond:

[*Latin ed. p. 301*]

ALATRI, 301. Regarding points I and II, the matter is settled by the decree, and provision is made for point III.

From the foregoing, the following may be gathered:

I. Three things are required to properly effect affiliation: namely, the license of the Superior, the consent of the religious of that community of which one is a member, and the consent of another community in which the affiliation takes place.

II. By a pontifical declaration of December 9, 1859, those who have professed simple vows may lawfully and freely make the solemn profession of vows in the community or house in which they are found.

III. An affiliation may be defective in some particular, which can be remedied by the Apostolic See; and the solemn profession may appear to be lawful and valid, provided that it lacks nothing essential, if it is properly performed according to the dispositions of the Constitution of Pope Pius IX of March 19, 1856, and the pontifical declaration of December 9, 1859.

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AQUEN. Regarding votive offices. The Reverend Lord Joseph Mary Sciandra, the present Bishop of Aquen, humbly submitted the following questions to the Sacred Congregation for a suitable solution:

From the decree of the same Sacred Congregation of July 23, 1835, (1) in Namur, number X, the free recitation of any office at will is made obligatory when it has been ordered by the Ordinary on those days. (1) We considered it appropriate to refer to the cited decree: Is this the case, or not? If not, are they bound to conform to this office, if they are X? Do clerics who are bound to the *Hodie duplex*, as the Office of the Conception of the Most Holy Virgin, for canonical reasons, have to recite the votive offices, such as the SS. Sacraments, which are conceded *ad libitum* by the concession of Pope Clement XI, and have they recited them, or not? And the Sacred Congregation replied: "If it is established that the Feria quinta is not impeded, etc., and the Indult for the Office of the Conception of the Most Holy Virgin is not impeded, etc., if they are added by order of the Ordinary on those days in the calendar, according to the Apostolic Constitution (4746), it is permissible, but not obligatory." On May 23, 1835, in Namur...

[*Latin ed. p. 302*]

302 AQUÉN. [This matter] is noted in the Diocesan Calendar. The same appears to be confirmed by a recent Decree of the Sacred Congregation, issued on July 5th of the current year, concerning the recitation of the Divine Office; for, after the election of the Chapter officials, which is made once and for all and approved by the Ordinary, the recitation of the Divine Office by them becomes obligatory. On the contrary, concerning private recitation, each member of the clergy is permitted, at his discretion, to recite the Office of the day or a Votive Office on that day. Hence, the following questions arise:

Question I. Whether the freedom of choice concerning private recitation is limited only to the Offices permitted in the Decree cited on July 5th, and therefore, whether the Decree of May 23, 1835, concerning Offices recited at one's discretion, should be observed?

Question II. Whether, in preparing the annual Order of the Divine Office, the Office of the day and another Votive Office at one's discretion should be noted, when the recitation of either is left to the discretion of each individual?

And the Sacred Congregation, after mature deliberation on the aforementioned report of the Secretary, decided to respond as follows:

To Question I. The affirmation is correct.

To Question II. In preparing the Order of the Divine Office, according to the usual practice and according to the rubrics, a particular rubric concerning the Votive Office of the current day may be added. And thus it was written and ordered to be observed on September 4, 1883.

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FROM THE SACRED CONGREGATION FOR INDULGENCES: Questions concerning the Papal Blessing.

MOST BLESSED FATHER, Professor of Moral Theology of the Seminary of Mechlin, to the feet of Your Holiness:

"With the utmost humility, I implore a solution to the following questions.

I. Whether, notwithstanding the Declaration of the Sacred Congregation for Indulgences of April 23, 1675, which states that "the Plenary Indulgence in articulo mortis is truly granted only in the actual article of death," this Indulgence, or Apostolic Blessing (although, as is supposed, it is granted only in the actual article of death), can nevertheless be granted even when someone is in a prudently estimated or reasonably presumed danger of death, so that this existing custom of granting it may be preserved?"

[*Latin ed. p. 303*]

QUESTION 303: When are the sacraments conferred upon those departing this life, or when can a more urgent danger be anticipated, or not?

II. If the answer to the first question is negative, or at least in doubt, whether the Apostolic Blessing has been granted in due time, can this, in the case of a more urgent danger, be repeated in the same infirmity, because perhaps the prior concession was invalid due to a lack of true mortal sin?

III. In a document from Belgium, dated March 12, 1855, it is written: "The Holy Congregation of Indulgences, in a decree issued in Valentinen, on February 5, 1841, addressed the following question: 'Can a sick person repeatedly obtain a plenary indulgence in articulo mortis, granted by several priests who have the faculty to do so?' The resolution given was: 'No, in the same articulo mortis.' Then the following is asked: '1. Is it forbidden, by virtue of the preceding resolution, to grant to a sick person, remaining in the same articulo mortis, the plenary indulgence in articulo mortis, commonly called the Apostolic Blessing, repeatedly by the same priest or by several priests who have the faculty to do so? 2. Is it also forbidden, by virtue of the same resolution, to grant to a sick person, under the same circumstances as stated above, a plenary indulgence in articulo mortis repeatedly by several priests who have the faculty to do so, but from a different source, such as through membership in the confraternity of the Most Holy Rosary, the Holy Scapular of Mount Carmel, the Most Holy Trinity, etc.?' To these two questions, according to the collection of Prinzivalli, which has been recognized as authentic, the Holy Congregation of Indulgences responded: 'To the first and second: No, with the resolution of Valentinen remaining firm. February 5, 1841.' According to the authentic collection, which was published in Ratisbon in 1883, the same Holy Congregation considered it necessary to respond: 'Affirmatively to both, with the resolution in Valentinen remaining firm. February 5, 1841.' Should

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this latter response be considered the authentic one, so that the practice of priests, who are accustomed to granting the Apostolic Blessing repeatedly in the same articulo mortis from a different source, should be changed?

The Holy Congregation of Indulgences and Sacred Relics, having considered the proposed questions, responded:

To I: Adhere to the declaration of April 23, 1675.

To II: As provided in the first.

To III: The response, as it appears in the latest edition from Ratisbon, published by Fricl. Pustet, must be strictly observed.

For the Most Reverend Cardinal L. Oreglia, from St. Stephen.

L. Cardinal Bonaparte.

Francis Della Volpe, Secretary.

[*Latin ed. p. 304*]

304 FROM 3. CONGREGATIONE INDICIS DECREE, dated Friday, December 19, 1884. The Holy Congregation of Eminent and Reverend Cardinals of the Holy Roman Church, appointed by the Most Holy Lord Pope Leo XIII and the Holy Apostolic See to oversee the Index of books of pernicious doctrine, and their condemnation, suppression, expurgation, and permission throughout the Christian Republic, having met in the Apostolic Palace at the Vatican on December 19, 1884, condemned and condemns, suppresses and prohibits, or orders that the following works be referred to the Index of Prohibited Books:

* *Siete Tratados por Juan Moltalvo en dos tomos.* Besanzon, printed by José Jacquin, 1882.

* *Nouvelles études d'histoire religieuse,* by Ernest Renan. Paris, Calmann Lévy, publisher, 1884.

* The author of the work (Giuseppe Sandrini), entitled *Saggio di letture giovanili ad uso delle scuole popolari*, which was prohibited by decree of April 23, 1860, has commendably submitted to this and has disapproved of it.

* The author of the work (Fr. Gaspar), entitled *Der Vernunftstaat nach seinen Rechten und Pflichten*: In Latin, *Status rationalis, eiusque iura et obligationes*, Luxembourg, 1883: prohibited by decree of May 9, 1884, has commendably submitted to this and has disapproved of it.

Therefore, no person of any rank or condition may dare to publish, print, read, or retain the aforementioned work, in any place and in any language, either now or in the future, but must deliver it to the Ordinary of the place, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books.

These matters, having been reported to the Most Holy Lord Pope Leo XIII by me, the undersigned, a member of the S.I.C. from the Secretariate,

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His Holiness approved the decree and ordered it to be promulgated. In witness whereof, etc.

Given at Rome on December 19, 1884, by FR. THOMAS M. CARD. MARTINELLI, Prefect. In place of FR. JEROME PIUS SACCHERI, Order of Preachers, S. Ind. Congregation, from the Secretariate. Seals.

On December 22, 1884, I, the undersigned, Mag. Cursor, testify that the aforementioned decree was affixed and published in the City. Vincentius Benaglia, Mag. Curs.

[*Latin ed. p. 305*]

305 FROM S, THE CONGREGATION OF THE COUNCIL OF NEAPLES FOR MATRIMONY, June 14, 1884. SUMMARY OF THE CASE. In the year 1872, Aloysius of Naples, from the parish of St. Mary Apparent, desired a young woman named Aloysia, who resided in the parish of St. Thomas near Capua, with whom he had also entered into betrothal. However, a civil bond, by which they were bound, presented an obstacle on Aloysius's side, for the civil law forbade him from entering into marriage, as he was engaged in military service on ships, commonly known as a "vulgo fuochista di marina" (fireman of the navy). Therefore, intending to enter into a religious marriage, in order to achieve their desired outcome, and to prevent the matter from being revealed, from which Aloysius knew he would be punished by his superior, they had the betrothal ceremony performed in the parish of St. Mary of the Angels near the crossroads; specifically, in the house of a certain Salvator De Marco, who was very well known to the parish priest of St. Mary of the Angels, as a religious man and devoted to the service of the Church. Therefore, before the aforementioned parish priest, having deceived him with their artifice, Aloysius and Aloysia entered into the betrothal ceremony on June 29, 1872. After these events, the Neapolitan Curia issued a decree against the betrothed couple, in the presence of four witnesses. Having obtained this, they proceeded to consummate the marriage in an illicit manner, from which a son was born, who is still alive. Three days after this scandalous act, Aloysius was compelled to request leave. But before departing, moved by the miserable condition of the bride, he entrusted her to his mother, to designate any young man who would act as a *procuratorio nomine* (in the name of the proxy).

[*Latin ed. p. 306*]

306 In Naples, a marriage was contracted. This indeed occurred, but the matter proceeded further; for the young man Nicholas, aided by his mother, did not act as a procurator, but, with Aloysius and Aloysia fully aware and consenting, contracted marriage on July 21, 1872, before the parish priest of St. Mary of Angels and witnesses, who were ignorant of the fraud. Within a year of this marriage being celebrated, Aloysius returned to Naples not once, but several times, and resided in his mother's house,

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where Aloysia resided from that time; until, after less than a year, he abandoned his bride, never intending to return to her. Finally, desiring to enter into new marriages, Aloysius went to the Neapolitan court on September 18, 1880, stating that Aloysia, from the very beginning, had neglected her husband and given herself over to vices, making it so that the nullity of the marriage could not be remedied. And therefore, he implored the archiepiscopal court to institute a trial from which the nullity of the marriage would rightfully arise. The Neapolitan court conducted a trial, and on April 25, 1881, by a final judgment, it was declared that the marriage contracted by Aloysius and Aloysia on July 21, 1872, before an improper priest, was invalid and null, according to the head of clandestine marriage, Session 24 of the Council of Trent concerning Reforms of Marriage, and due to a lack of consent. (1) An appeal was made by the defender of the marriage to the Holy See, and the Metropolitan judgment was reviewed. Due to the benevolence of the Holy Father, and considering the testimony of the court regarding the poverty of the parties, the cause was presented with the usual opinions of theologians and canonists, together with the observations of the Defender of the Sacraments, of which we offer a synopsis. SYNOPTIC DISCUSSION OPINION OF THE THEOLOGIAN. The marriage, concerning which we are speaking, the Theologian stated, was null due to the head of clandestine marriage properly so-called; (1) It should be noted that the betrothal, by reason of the betrothal documents and the dowry, even though clandestine, was valid, provided that the parties renounced their rights. Aloysius was ordered to pay 100, and Aloysia received 100.

[*Latin ed. p. 307*]

NEAPOLITANA 307. Indeed, that marriage is properly clandestine, according to the Council of Trent, which is contracted without the presence of a parish priest, or another priest with the permission of him or of the Ordinary, or without two witnesses. The parish priest is properly that one who, at the time of the celebration of the marriage, has ordinary jurisdiction over the contracting parties: and he is the parish priest both of the domicile, and also, as it were, of the domicile in which someone is present. But neither Aloysius nor Aloysia had a domicile under the parish of Saint Mary of the Angels at the Crosses; hence, no marriage was celebrated before the parish priest of that parish. To celebrate a marriage knowingly and fraudulently before a non-proper parish priest is the same as celebrating it without a priest, that is, to celebrate it clandestinely. Now, it is easily recognized that neither the bride nor the groom had a domicile or quasi-domicile within the limits of the aforementioned parish. For both of the betrothed, questioned judicially and under the sanctity of an oath, unanimously answered that, at the time of the marriage, they did not have a domicile under the aforementioned parish of Saint Mary of the Angels at the Crosses; but that they had only established a domicile there in order to secretly contract

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the marriage. The same was testified by other witnesses. However, it is not necessary to insist that this marriage is null because of the head of clandestinity, and also because it is null due to a lack of consent. It is certain, said the Consultant, that Aloysius never appeared before the parish priest of Saint Mary of the Angels at the Crosses, in order to contract a marriage with Aloysia. For, after he obtained from the Curia the decree which they call "contrahentur," he deceived Aloysia under the pretext that they were now truly married, and he carnally knew her, and after two or three days, he abandoned her. Hence, if he did not appear before his presumed proper parish priest, or before another, it is clear that he could not have given the necessary consent to contract the marriage. But consent, regularly given, is so necessary for marriage that, without it, it cannot be valid in any case. There is no doubt, for many testify, that Aloysius committed an act with his own mother before he left.

[*Latin ed. p. 308*]

308 In Naples, another matter arose: the need to find a young man who would represent Aloysius himself in the marriage ceremony, acting as his proxy. But can such a mandate be valid in the supposed celebration of a marriage? If the matter concerned the regularity or licitness of the marriage, then it could not be doubted that the mandate would have been irregular and without the precautions prescribed by the Church. But here the matter is of validity, and therefore all other considerations must be set aside, provided that the essential elements for validity are found. Could Aloysius's mother, by virtue of the mandate received from her son, validly appoint and designate another person to represent her son as a proxy in the marriage celebration? (1) St. Aloysius, in Moral Theology, book 6, chapter 885, enumerates the conditions under which a proxy is valid in celebrating a marriage. Assuming that Aloysius gave this mandate to his mother, it would seem that the substantial elements for the validity of a marriage initiated through a proxy are present in this case; unless there was a lack of due and valid consent expressed before the priest and witnesses. Indeed, the young man that Aloysius's mother found, and to whom she entrusted the task of representing her son in the marriage celebration, did not appear as Aloysius's proxy, but pretended to be Aloysius himself. He did not show any documentation, nor did he reveal to the priest that he had a mandate, as is required. And it is clear that this happened, as evidenced by the testimonies and the records of marriages in the parish of St. Mary of the Angels at Cruces. Thus, the priest was deceived regarding the person; for while he believed he had Aloysius present, in the act of celebrating the marriage, it was actually Nicholas who was present. Nor does it matter that Aloysia, the witnesses, and all those present knew that Nicholas was not the bridegroom, but the bridegroom's proxy; (1) It is agreed upon by theologians and canonists that a proxy can also delegate, and the mandate

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that Aloysius gave to his mother to appoint a young man who, if authorized by the principal, would act in his name in the celebration of the marriage, could be valid, provided that the person delegated does not exceed the limits of the mandate, and that the person delegated must be individually designated by the principal himself. Regarding this matter, according to canon law, the person delegated must act in the name of the principal.

[*Latin ed. p. 309*]

NEAPLES 309, for this fact must be known even by the parish priest, in order that the act may be valid. After the Council of Trent, chapter concerning the form of marriage, determined that the presence of the parish priest is necessary for the marriage to be validly contracted; it is necessary that the consent to the marriage be expressed before him, so that the parish priest himself may be able to testify to the consent given. For, although the parish priest, even if compelled to be present at the marriage, renders the marriage valid by his presence; nevertheless, this presence must be moral; that is to say, so that the parish priest himself understands, or at least sees, what is being done. For, as Canonists and Theologians point out, he is not merely a witness, but a principal and qualified witness; and therefore, just as the absence of three, or at least two, witnesses would render the marriage invalid, even if the parish priest were regularly present; so also, and even more so, the absence of the parish priest renders the marriage invalid. But in the case we are discussing, no consent was expressed before the parish priest; for Aloysius, who was absent, did not express it, nor did Nicholas, who did not express Aloysius's consent, but his own. In the present case, the decree of Trent is frustrated, which states that a marriage is invalid without the presence of the parish priest and witnesses, so that marriages which cannot be considered to be in accordance with the Church may not be celebrated. Furthermore, Bonacina, in question 3 on the nature and properties of marriage, point 5, number 11, teaches that the procurator, in expressing the consent, must use words that express that he is contracting on behalf of and in the place of the person he represents, and not in his own name. From what has been said, the Consultant states that the nullity of the marriage remains sufficiently proven. OPINION OF THE CANONIST. After setting aside the question of the validity of the betrothal, the Consultant observed that it is necessary to inquire only about the marriage, the nullity of which is apparent from the acts that prove that this marriage was clandestine, namely, that it was begun by the contracting parties before a parish priest who was not their own, that is, neither of their domicile nor quasi-domicile. For the bridegroom and the witnesses declared that neither of them had ever ha-

[*Latin ed. p. 310*]

310 In Naples, there resided Salvator de Marco, who falsely reported to

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the parish priest of Saint Mary of Angelorum that the contracting parties were living in his house. Furthermore, the records show that the contracting parties never abandoned their former residence, nor did they intend to abandon it, or to transfer it elsewhere; but rather, they merely pretended to reside within the parish boundaries of Angelorum, in order to contract marriage there where they would be unknown. The nullity of this marriage is not demonstrated solely on the basis of clandestine marriage, but also on another basis: namely, the lack of consent. For neither Aloysius was personally present at the celebration of the marriage, nor can it be said that he was present through another, that is, through a procurator. Aloysius himself was absent at that time, being in Naples, as the records most certainly show. But it cannot be said that the marriage was entered into through a procurator; for there was no written mandate, not a special and definite one, which was ever presented to the Curia, or to the parish priest, or to the witnesses. However, whatever may be the case regarding the mandate, since the mandatary, Nicholas, acted in the celebration of the marriage as if he were the true Aloysius, it follows that the parish priest and the witnesses present at the marriage were not witnesses according to the form prescribed by the Council of Trent, because consent was not given in a certain and legitimate manner.

OBSERVATIONS OF THE DEFENDER OF THE SACRED BOND. From numerous omissions, the archiepiscopal Curia has learned that the defender was not diligent in conducting the proceedings, as is demonstrated by the fact that the judgment of the same Curia is entirely to be refuted, since it is entirely devoid of foundation. Since both consultants believed that the two grounds for nullity upon which the judgment is based were sufficiently proven from the procedural records, the accuser proposed to examine what could be gathered from the proceedings. And with regard to clandestine marriage, the accuser observed that the man's mother, sister, and wife testified that they had never lived in the parish of Saint Mary of Angelorum. But what is to be thought of these things? The man is a party in the cause, and so too is the woman, and they should be considered as such in their own cause; for there is no concern about...

[*Latin ed. p. 311*]

In Naples, 311 marriages were valid, but he [Aloysius] completely disregarded the honor of himself and his children, intending only to seize a profit. Other women are relatives, whose testimony, he says, can be suitable in cases where marriage is being prevented, or where an impediment is being proven, but not when it is a matter of dissolving a marriage already contracted. Furthermore, the testimonies of these same women are to be entirely rejected, because they are involved in various contradictions. Nevertheless, despite these things, it is established that Aloysius and Aloysia entered into a marriage before the parish priest of Saint Mary in Angelo-

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rum, establishing a domicile for the purpose of contracting marriage, a house located within the boundaries of that parish. It is further established that both of them resided in that house for some time. What more, then, do we require in order to rightfully call the aforementioned parish priest the proper pastor of the contracting parties, according to the mind of the Council in chapter [unspecified]? Surely, it is not hidden that the proper pastor, before whom the sacrament of marriage must be celebrated, is not merely the pastor of the domicile, properly speaking, but also the pastor of the quasi-domicile. This is held by all doctors, it has been handed down by the Sacred Congregation of the Council, and it is taught by Benedict XIV in a letter from a few weeks ago, on March 19, 1758, to the Archbishop of Groano. The witness, according to the Consultor, asserted that the domicile was simulated; and referring to the intentions of the spouses, as he had received them from the same, he did not present any fact from which it could be argued that there was a simulation. Moreover, what did the spouses simulate in this case? The intention or the fact of habitation? Neither, certainly, because, according to the witness himself, they truly resided in that parish, and they had the intention of remaining for as long as it was necessary, in order that the marriage could be celebrated before that parish priest. However, there is a very important testimony presented by Aloysio Miele, to whom the court entrusted the task of diligently inquiring about the domicile that the spouses had before the marriage. But the Neapolitan court did not care about this testimony, and it gave credence to witnesses who should be rejected, because they were subject to many exceptions, in order to...

[*Latin ed. p. 312*]

312 In Naples, a marriage nullity was claimed due to a lack of consent, with the assertion that the party did not participate in the marriage ceremony, and that a certain Nicholas, simulating the person of the claimant, had given consent. However, the defender inquired: Did the Neapolitan court not question the parish priest, witnesses, and even Nicholas himself, who is still alive? And indeed, it is not credible that the parish priest would have accepted Nicholas as Aloysius, whom he had seen a few days prior, with whom he had spoken, and whom he had even heard entering into a marriage with Aloysia before his very eyes? Therefore, since this process is afflicted by so many flaws, and since it lacks conclusive and juridical proof of the facts upon which the judgment of the Neapolitan court is based, it must, therefore, be entirely refuted. After careful consideration of all matters, the following question was to be resolved: Whether the judgment of the archiepiscopal court regarding the nullity of the marriage should be confirmed or refuted in this case. RESOLUTION. The Sacred Congregation, after deliberation on June 14, 1884, decided to respond: Affirmatively to the first part, negatively to the second. FROM WHICH THE FOLLOWING

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ARE DERIVED: I. A clandestine marriage is properly said to be that which is contracted without the presence of a parish priest, or another priest, with the license of him or his Ordinary, or without two witnesses. II. The parish priest is considered to have proper jurisdiction over the contracting parties, or either of them, at the time of the marriage ceremony, either by domicile or by quasi-domicile. III. To establish a legal domicile, it is required that there be an actual residence with the intention of permanently residing there; to establish a quasi-domicile, it is required that the contracting party has resided for at least one month in the place where the marriage is celebrated; thus, he becomes known to the inhabitants of that place and is considered as a quasi-citizen.

[*Latin ed. p. 313*]

NEAPLES 313 IV. It is not the case that those who, without the intention of abandoning their dwelling place, transfer themselves to another parish solely with the intention of celebrating marriage there, act improperly.

V. The nullity of a marriage, based on the grounds of clandestine celebration or on the deficiency of the proper pastor in the matter, has been proven through the testimonies of numerous witnesses.

VI. A marriage can be validly contracted through a procurator, whether by reason of contract or by reason of the sacrament; there is no room for doubt: provided that the procurator, among other things, shows the mandate to the pastor and the witnesses, and uses words that indicate that he is contracting on behalf of another, not in his own name, saying, for example, "I take you as my wife in the name of Titus" – (1) VIII. Even if, concerning the "mandate," there may be no doubt about its regularity, nevertheless, if the pastor has been deceived concerning the person of the bridegroom, the Tridentine decree is frustrated, because the pastor cannot testify to the given consent.

CAPACCIO - VALLEN. DAY OF CLAIMS, July 12, 1884. SUMMARY OF THE CASE. The city of Capaccio, after the old Caputaquium was abandoned in the declining twelfth century and utterly destroyed by enemies, was nevertheless rebuilt.

(1) The procurator ought to use words that indicate that he is contracting on behalf of another, not in his own name, as if he were saying: "Titus, through me, takes you as his wife." Thus, Bonacina, in his treatise on marriage, point 5, number 11, states: "I, through you, take Titus." Similarly, the woman must respond: "I accept you."

Secondly, what words should be used by the procurator, when celebrating a marriage in the present tense, to sufficiently express consent to contract marriage in the name of another? Thus, Covarruvias, part 2, chapter

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8, and Lacroix, book 6, part 2, number 259, express it.

[*Latin ed. p. 314*]

314 CAPUT AQUÉN. – The See had been established, but it never possessed those things which are fitting for an episcopal residence, and which are entirely necessary for its dignity and proper functioning. Furthermore, its cathedral church, dedicated to the Blessed Virgin Mary, assumed into Heaven, which was built in ancient times, was located almost two Roman miles from the city; and it lacked the clergy necessary to provide not only daily sustenance, but also the celebration of the divine offices, and it lacked a formal college of canons. Consequently, each bishop of that See was accustomed to reside elsewhere, at his own discretion, and this caused great inconvenience and serious detriment to spiritual affairs. – Therefore, desiring to promote the dignity of this See, and for the better governance of its faithful, His Holiness Pope Pius IX, having appropriated certain goods and revenues from several abbeys, decided to establish the residence of the aforementioned bishop, along with the cathedral church, the Chapter, the curia, and the diocesan seminary, in the civil town commonly called Vallo. This he actually accomplished through apostolic letters, "Concerning the love of justice, etc.," issued on July 16, 1851, by his own authority and with full knowledge. However, among the abbeys which were suppressed and incorporated into this newly established See, was the Abbey of *nullius dioecesis*, commonly called del Bosco, which, together with several of its villages and all its revenues and rights, was assigned to the Caputaquensi episcopal See, so that from it, in particular, a suitable endowment could be established for the cathedral building and the sacristy. Of the five towns which previously constituted the Abbey of del Bosco, the following three, namely, commonly called Eremiti, S. Nicola, and S. Nazzario, were assigned to the dioceses of Caputaquensi and Vallo; while the other two, Bosco or Borgo S. Giovanni, and Cusati or Licusati, were attached to the territory of the Policastrensis diocese. The parishes established in each of these towns, even before the suppression of the Abbey, although not in the same proportion, nevertheless received a certain sum of money annually from the Abbey for the expenses of worship and for the proper support of the pastors.

[*Latin ed. p. 315*]

CAPACCIO.—VALLEY. 315 The Abbey was suddenly dissolved in the year 1851, and its assets were assigned to the episcopal table of Capaccio. Immediately, the aforementioned parish priests of these parishes petitioned the Bishop of Capaccio, urging him to fulfill the payments which they had been regularly receiving from the Abbey. The Bishop, desiring peace, as he said, granted their petition and paid these aforementioned payments until the year 1860. Then, at this time, when the Bishop was

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exiled, these payments were made until the year 1876 by the royal Sub-Economus. However, in the year 1867, upon the Bishop's return to his See, after the revenues of the ancient Abbey had been diminished, he ceased to make the aforementioned payments. This diminution of the Abbey's revenues occurred due to the prescription of the censuses, by which the revenues of the same were chiefly constituted. Indeed, the law prescribed that all canons, censuses, and payments of any kind, pertaining to the moral bodies of the Kingdom of Naples, should be recorded in a certain list, which should bear the title of restraining debtors in judgment, and which should be renewed or extended every thirty years, under penalty of prescription. Therefore, since the list of censuses pertaining to the ancient Abbey, - del Bosco - was not renewed in January 1859, the debtors, having learned in the year 1866 of this defect in the new inscription, ceased making payments of canons and censuses. Nevertheless, despite these circumstances, the aforementioned parish priests vigorously demanded the customary payments from the Bishop of Capaccio, who considered a certain amicable agreement to avoid scandals. Although the greater part of the revenues of the Abbey - del Bosco - came from censuses and canons, nevertheless, there were also some properties, both rural and urban, belonging to the same Abbey, which, after a conversion carried out by the Government, still left an annual sum of 3,663 livres to the episcopal table. The Bishop of Capaccio had therefore intended to divide this sum, after deducting expenses, into six unequal parts, reserving the larger and more substantial portion for the episcopal table, while the other five parts were intended for...

[*Latin ed. p. 316*]

316 CAPUTAQUEN.—VALLEN. The sum was to be distributed among the five aforementioned parish priests. The parish priests of Bosco and Licusati, who are subject to the jurisdiction of the Bishop of Policastro, refused to accept this proposal of the Bishop. The Bishop of Capaccio, upon learning of this, immediately withdrew the proposal, stating that he was not obligated to make these payments, both because the assets of the suppressed Abbey were exclusively assigned to the episcopal table, and also because, today, scarcely, or perhaps not at all, does the episcopal table retain a fitting amount.

A Synopsis of the Dispute:

Since, according to these Apostolic letters, all and every asset of the suppressed Abbey – of Bosco – together with all rights and revenues, has been assigned to the episcopal table of Capaccio, without any limitation, because no mention of any reservation of burdens or fruits is found in them; and since it is known that words that are indistinct and general must be understood in an indistinct and general manner (L. 1 de pretio ff. de publicia; L. 1 § quod autem ff. de alea; L. 1 §. generaliter ff. de Legat, praest. Cap. Solite de maior, et obed.); it seems that the assets and revenues of the

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Abbey, being assigned to the episcopal table, are such that any payment of the fruits thereof is entirely excluded. It does not seem that the matter has been transferred with its burdens, and it cannot be presumed that the Pope intended to prejudice the rights of his parish priests by these letters.

To this, it can be responded that the existence of a burden on the Abbey to make these payments is highly doubtful, given the silence of the Apostolic letters of July 16, in which no mention is made of the obligation to make the aforementioned payments. Furthermore, the parish priests themselves do not demonstrate the nature of the title of right that they claim: and therefore, although the title could be proven by the long-standing observance of these payments, according to the text in L. Cum de in rem verso ff. de usuris; and in L. Si certis annis C. de paci, and the text in Cap. Pervenit de censu.

CONCERNING THE EPISCOPAL TABLE.

[*Latin ed. p. 317*]

CAPACCIO.—VALLEN. 317 [sibus], tamen, si hoc a principio esset corruptum, haec regula non amplius valeret. Praeterea, concessa etiam existentia iusti tituli in favore Parochorum, ad secundum respondere potest, quod praesumptio cedere debet veritati, et regula de iure quaesito non tollendo, non valet quando Papa, motu proprio et ex plenitudine potestatis, eidem expresse derogaverit, ut traditum est per Fagnanum in Cap. Causam quae 18 de rescript, num. 35, cum Rota apud Caesar, de Grass, dec. 9 alias 3 de Rescript, et dec. 1 num. 10 de verb. signi f. quae decisiones multoties approbatae sunt, Seraph, dec. 1082 n. 6 et seqq. Quod autem Pontifex in casu huic regulae derogavit etiam pro peculiaribus hisce Parochorum iuribus, non immerito putatur ex effraenatis verbis, quibus Pontifex ipse suarum litterarum executionem commendavit. Implicite itaque videtur Pontifex etiam iuribus Parochorum, si quae aderant, derogasse per amplissimas has clausulas: non enim necessaria est specifica derogatio ubi per viam legis, dispositio emanat. L. Omnes C. de quadr. praescr.; Clem. 1 cum Gloss, fin., et Clem. 2 vers. Nos etenim * de sepulturis. Possibile est autem Pontificem rem uni Ecclesiae auferre et dare alteri, quod exploratum est, ex Cap. Conquestus, Cap. Nec vero et Cap. Per principalem 9 quaest. 3 Gloss, in Cap. 1 in vers. Iniustitiam 22 distin. Verum concesso etiam quod per citatas Apostolicas litteras derogatum non fuerit iuribus Parochorum, altera ratio ob quam hodie Episcopus caputaquensis teneri haud videtur ad praefatas praestationes solvendas, poni debet in eo quod eidem integra non remaneat congrua a ss. Canonibus Episcopis assignata. Nota est dispositio Conc. Trid. in Sess. 24 Cap. 13 de Reform, decernens ut: « omnes Cathedrales » Ecclesiae, quarum redditus summam ducatorum mille.... » secundum verum annuum valorem non excedunt, nullis » pensionibus, aut

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reservationibus fructuum graventur; » quam dispositionem omnes DD. ita interpretantur ut ne-

[*Latin ed. p. 318*]

318 CAPUTAQUENSIS.—VALLEN. Quod, cum talibus proveniendi ecclesiasticis, mensae aliquam quantitatem fructuum reservari possit, ita Flamin. Paris, *de résignât*, lib. 6, quaest. 2, n. 24 et seq.; Garcías de benef. part. i, cap. 5, n. 393; Azor. instit. Moral, p. 2, lib. 7, v. 21, qu. 8; Barbosa in Goliat, ad Conc. Trid. Sess. 24, cap. 13, n. 12. Quod ita est verum, ut etiam si pensiones vel reservationes iam impositae sunt, hae deminui vel omnino delebi debent, quando congrua mille ducatorum, ex diminutione vel cessatione reddituum, non remaneat pro Episcopo, sicut patet ex Decreto S. Congregationis E.E. et R.R. - Cum nuperrimis - diei 28 Ianuarii 1871. (1) Quod autem haec verba Decreti taxative intelligenda sint, ut maneat pro mensis episcopalibus dumtaxat redditus ducatorum mille, cessare debeat in titularibus obligatio solvendi pensiones, ipsamet S. Congr. E.E. et R.R. declaravit in Romana, quoad reductionem et suppressionem pensionum, diei 30 Maii 1873. (2) Porro, redditus mensae episcopalis caputaquensis, post diminutionem sequutam ex praescriptione censuum ad eam pertinentium, non ascendere ad summam mille ducatorum, ipsemet Episcopus pluries docuit. Probata igitur tenuitate, imo et deficientia congruae episcopalis, optime concludi posse videtur, hodie Episcopum caputaquensem haud teneri ad solutionem praestationum ob cessationem suae obligationis. Proindeque nihil etiam officit quod primus Episcopus caputaquensis eas solverit statim post unionem usque ad annum 1860: siquidem tunc temporis integros abbatiae redditus percipiebat et salvam congruam habebat. Ceterum uterque Episcopus fatetur praestationes illas persolutas fuisse solo amore pacis, ac titulo charitatis. Nec aliquid contra huiusmodi conclusionem facere videtur id quod a parochis insinuatur; nimirum non culpa gubernii, sed potius culpa Episcopi caputaquensis, census mensae epi(1) Habes hoc decretum Vol. VII, pag. 325. (2) Recole Vol. VII, 328.

[*Latin ed. p. 319*]

CAPACCIO.—Furthermore, thirty-one (31) claims have been presented; however, both the deceased and the current Bishop deny this, stating that the burden of settling these claims did not fall upon them, but rather upon the diocesan administration and commission. Indeed, no one ought to be punished, or deprived of their rights, or suffer harm, without fault, as is stated in the argument of Chapter VI of the *Regulations on Canon Law*. On the other hand, two parish priests of the diocese of Policastro are determined to demonstrate that the Bishop of Capaccio is obligated to fulfill those payments which were regularly received from the Abbey of Bosco. Indeed, since the abbatial treasury was burdened with these payments

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due to the favor of the parish priests, a fact which even the Bishop of Capaccio readily admits; and since, through the union and incorporation of the Abbey, the episcopal treasury of Capaccio succeeded to the rights and privileges of the same, as Fagnanus states in Chapter *Novi Canonii*, numbers 3 and 8, and Schmalzgruber, *Part I, title 5, on Prebends*, number 161, along with others cited by them; it follows that it must also succeed to its burdens; therefore, just as the Abbot was previously obligated, now the Bishop is obligated to fulfill the aforementioned payments. It is indeed established in law that obligations pass with their burdens, as the *Rota Romana* states in the census of January 14, 1602, case Damasceno, and in the *Recent* decisions, number 60, part 1, number 4; and the nature of obligations does not change with a change of persons, according to the text in Law 2, *de vera obligatione*, Constantini, Volume, decision 369, number 7; *Rota*, decision 46, number 25, part 5, and decision 413, part 9, *Recent*. And the truth of this conclusion was confirmed initially by the Bishop of Capaccio himself, who until the year 1860 paid those payments; and then by the royal treasurer, who until the year 1866 did not cease from collecting them. It cannot be said that, through Apostolic letters dated July 16, 1851, these rights of the parish priests were derogated from, and that the Bishop of Capaccio only fulfilled the payments out of a desire for peace. For, in the first place, it must be noted that, since in those letters the rights of the parish priests were not expressly and specifically derogated from, it cannot easily be presumed that such derogation occurred; for...

[*Latin ed. p. 320*]

320 CAPUTAQUÉN.—VALLEN. A prince is never considered to intend to prejudice or to take away the right of a third party, L. 2 §. If anyone is prevented by the Prince from doing something, as is stated in the place mentioned, and in Cap. Eoo, part 2, at the end of Cap. Regarding the delegation of office; De Luca, *De Feudis*, discourse 27, n. 6, regarding jurisdiction, discourse 41, n. 6; Fagnan, in Cap. Regarding the letters concerning Rescripts, n. 20; this especially applies to the Pope, because of his rule that he does not take away acquired rights, De Luca, *De Praem.*, discourse 40, n. 4, regarding jurisdiction, discourse 70, n. 16, and Fagnan, in Cap. Regarding the first sentences and judgments, n. 23. Nor does the Pontiff seem to have implicitly derogated from those rights, as is evident from the adjudication made in favor of the goods of the Abbey, for the benefit of the episcopal See, and from the addition of clauses that derogate from the Apostolic letters. Indeed, these general additions and statements appear to be intended to achieve the suppression of the Abbey and its union and incorporation with the episcopal See of Capaccio; but not to derogate from the specific rights acquired over the Abbey's goods, since these rights do not oppose the union and incorporation, nor do they impede them. For a derogation, however general, does not expand the disposition, but is un-

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derstood in relation to its validity with regard to those things that impede its effect, Bald, in L. unica §. fin. at the end of C. latin, *libert. tollen.*; Felin, in Cap. *Nonnulli* n. 22j, 16, conclusions regarding Rescripts; Rota, decree 104, n. 5, part 2, *Rec.*. Furthermore, with regard to the diminution of the revenues of the episcopal See of Capaccio, arising from the prescription of the titles of censuses, it should be noted that, since the Bishop of Capaccio could have and should have prevented this, he must be held responsible if he did not do what he could and should have done. It is unjust that the negligence of one should harm another, when the negligence or fault of each should be imputed to him, L. in conclamatione §. unicuique ff. de reg. iur. L. subtracto C de furt. L. transactione finita C. de transad. Cap. mora sua, in V. Furthermore, it is given that the revenues of the episcopal See of Capaccio, without the Bishop's fault, have suffered a diminution.

[*Latin ed. p. 321*]

CAPACCIO.—QUESTION. There have been 321 such cases, but it does not seem that this one can be invoked in favor of the Bishop; the Decree – Cum nuperrimis –. And indeed, if the Bishop lacks something on one side, on the other, the parish priests also complain about this, and for this reason. Furthermore, this is confirmed by the very confession of the Bishop of Capaccio, who, when giving an account of the contributions of each parish, and before the Abbey of Bosco was established, openly confesses that the parishes of Bosco and Licusati must pay these contributions in order to complete the parish income. Therefore, if these contributions were not paid, the income would necessarily be lacking. Moreover, since the parish priests must have 100 ducats in accordance with the aforementioned Decree – Cum nuperrimis –, it is entirely clear that a Decree of this kind cannot be invoked by the Bishop against the parish priests. Indeed, it has been established that one privilege cannot be used against another, as Tiraquello states in *De Privilegiis*, page 26, column 43, line 2: "Cum privilegiatus." For privileges are examined among those who possess privileges, and common law is considered, as is stated by John Baptist de Thoro in *Summa Privilegiarum Piarum Causarum Privilegiatorum*, page 118, and by De Luca in *De Legationibus*, discourse 61, number 7. Therefore, the Bishop of Capaccio is obligated to pay the contributions, and even more so because, according to the testimony of the Bishop of Policastro, it seems certain that the government took these contributions into account when making the assignment of revenues to the episcopal See. Having considered these points from both sides, the following question was to be resolved: Whether the Bishop of Capaccio and Vallensis is obligated to pay annual contributions to two parish priests of the Diocese of Policastro in this case.

RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter on July 12, 1884, decided to respond: Affirmative, in proportion to the remaining revenues.

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FROM WHICH IT IS GATHERED: From the Tridentine sanction, *Acta*, Volume XVII, phase CIC, 21.

[*Latin ed. p. 322*]

322 CAPUTAQUÉN.—VALLEN. Furthermore, according to the disposition of the decree, a complete portion of one thousand is to be maintained for Bishops, and one hundred ducats for parish priests. II. The amount allocated to Bishops and parish priests should not exceed one thousand or one hundred ducats, respectively, so that neither the former nor the latter may be diminished in their pensions. III. A privileged individual cannot exercise his privilege against another who is equally privileged; because privileges among those who are privileged are reduced to nothing, so that among them, the common law must be observed. IV. Therefore, it has been rightly resolved that the obligation of the Bishop to pay annual allowances to those parish priests who did not receive the complete portion of the assigned amount remains; however, for the sake of equity, it is granted that these allowances be paid in proportion to the revenue received from the two sources.

PRAENESTE MARRIAGE. On July 12, 1884. SUMMARY OF THE FACTS. Placidus Sordi, twenty-four years of age, from Gallicani, on February 20th, contracted marriage in the parish church of that town with a young woman named Laetitia Cicerchia from Palestrina, seventeen years of age, who demonstrated, through numerous arguments, her unwillingness. It appears that she was compelled and reluctant to enter into this marriage, influenced by her mother, who, driven by a desire for wealth as well as piety, held great authority and influence over her children, possessing remarkable eloquence, and completely captivated by the wealth of the Sordi family. On the very day of the wedding, while Laetitia was weeping and lamenting, her mother pressed two alaps (a type of undergarment) upon her; then, completely resisting, accompanied by two relatives, she boarded a carriage to Gallicani to celebrate the marriage. Upon arriving, and at the time of the celebration, as the groom was already kneeling at the altar, Laetitia delayed her approach so much that it was necessary to urge her forward with words and gestures. Nevertheless, the marriage was celebrated, despite the mother's...

[*Latin ed. p. 323*]

In Praenestina, it is well known that the agreement, expressed verbally by both parties, was, to a certain extent, lacking. However, as Laetitia later declared, the agreement needed to be repeated, not because she had not expressed the part denying her consent, but even more so because it took place outside her homeland, and before the Archpriest of Sordi, Placido's uncle. The spouses did not neglect to perform the civil ceremony afterward. But after the nuptial feast, they went to Rome, and, while staying there for

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three days, the wife constantly refused the marital duty, shedding abundant tears because of her aversion to the man. Soon after, she returned to her family home with her husband, subjecting herself to a difficult fate, as she herself confessed, yielding to the man's requests. But this was entirely in vain. For the man was never able to penetrate the woman's body, completely lacking any erection or effort, although he repeatedly attempted to do so. Nor did it help to seek the advice and assistance of doctors, nor did the industry frequently attempted by the woman over a period of three years and more. For the man was found by the doctors to be completely afflicted with impotence. The woman, on the other hand, having been examined by an honest midwife and a doctor, was declared by both to be perfectly sound. In the meantime, on March 21, 1881, Laetitia approached the Most Holy Prince, so that he might deign to declare that no marriage had been contracted by her with Placido, either due to the lack of consent, or due to the man's antecedent and perpetual impotence; or, if not, to grant a dispensation from a marriage that was valid but not consummated. The Bishop highly commended Laetitia's prayers. Furthermore, he testified that the woman's testimony deserved all belief: for her virtue, her most evident piety, and her honesty, which have shone forth until the present day, provide a strong guarantee of her truthfulness. Out of kindness, the Most Holy [Prince] ordered that the case be presented to the theologians and canonists, along with the observations of the Defender of the Bond, and we provide a summary of their opinions.

[*Latin ed. p. 324*]

324. The Dispute at Praeneste. THE OPINION OF A CANONIST. The canonist, in his opinion, placed first the proposition that, from the facts already established, it was clear that the consent of the woman had been obtained through coercion and fear, to such an extent that the marriage begun remained invalid and null. To demonstrate this, he said: "Even after the doctors, the Sacred Roman Rota, in the case of Ludovisi, December 320, number 1, states: 'A prudent judge is not only obliged to examine whether the quality [of consent] exists and whether there is serious fear, or whether it is light, and whether threats and expressed violence are present or absent, but also to consider the circumstances, the condition of the persons, both of the one who inflicts and of the one who suffers; if the son is of a gentle disposition, timid and cowardly, endowed with good and virtuous morals, truly subject to the will of his parents, and has, through fear of his father, seemingly contracted marriage, then the judge must declare such a marriage null and void, even if there were no threats and expressed violence from the father.' Therefore, fear must be considered and assessed not according to the nature of the thing, or according to its gravity or lightness in itself, but according to the person in whom it is instilled. What would be light for a strong and courageous man, for another, especially for a girl,

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may prove to be the most serious and intolerable; therefore, fear must be considered and assessed in a relative sense, as the canonists say. The person in whom the fear was instilled was a girl of seventeen years, docile, very timid, gentle, deeply affected by great reverence and singular love for her mother, devout, of impeccable morals, and endowed with great piety. Considering all these things together, along with the sincere confession of the girl regarding the antecedents, concomitants, and consequences of her marriage, it clearly seems that the woman suffered coercion, and that the fear instilled was in a constant man. And there is no suspicion that the girl's testimony is exaggerated, because seven witnesses, with one voice, not only confirmed it, but also, under the sanctity of oath..."

[*Latin ed. p. 325*]

In Praenestina, with clearly defined circumstances and supporting evidence, they ingenuously presented their accounts, based on their own observations and experiences. From these testimonies, it is proven that the mother's prayers were persistent, continuous, most insistent, and frequently repeated: there was present a person to whom reverence is due, namely, the mother; indeed, a mother to whom one cannot resist. Furthermore, Laetitia exhibited fear, reverence, love, and the utmost obedience towards her mother, as well as timidity and apprehension. But the canonists, with Sánchez, book 4, dispute 7, paragraphs 5, 7, and 8, state: "Importunate prayers," together with reverential fear, as if they are directed towards a person to whom "reverence is due," can instill fear in a man. For, on the one hand, importunity, whatever its nature, strongly urges, if not vexes and oppresses; and on the other hand, the reverence due to the person making the request, rendering one timid and fearful, and not daring to contradict, rightly and justly merits that both be joined as causes of fear, compelling one to be prudent and steadfast, and to extract consent. However, I maintain that not all persistent prayers should be called importunate, but rather those that are insistent and frequently repeated and inculcated. In our case, all of these are verified; indeed, there are not only persistent, continuous, most insistent, and frequently repeated prayers, combined with reverential fear, but also severe reprimands. These threats were very serious and highly terrifying to the girl; since they deprived her of the companionship of her husband and hindered her happy state, as they induced the deprivation of hope and the inheritance of goods. Moreover, the mother was indeed capable of carrying out such threats: for she was of a tenacious and resolute nature; and threats were accompanied by slaps and beatings. There were also frequently repeated protests, and tears and lamentations. But the canonists, with Cosci, *De Separatorum*, book 1, chapter 8, paragraphs 72 and following, state that "it suffices to annul a marriage if there is qualified fear or importunate prayers and persuasions, which, when emitted by a person to whom one

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cannot resist, have the force of coercion; or by precise threats, beatings, and continuous reprimands, and..."

[*Latin ed. p. 326*]

326 PRAENESTINA, having been repeated more frequently, and with more serious circumstances. The same was judged by the Rota in decisions 301, paragraph 22, and 334, paragraph 10, part 11, recent. But there are greater reasons to demonstrate true coercion in the girl: for she was so filled with sadness and anguish that she fell gravely ill. Even on the day of the marriage, paleness and sadness were clearly evident in the girl, so that it appeared to everyone that she was going to the funeral rather than to the altar. But the Rota, in decision 406, part 18, volume 2, recent, paragraph 8, rightly argues that tears and complaints, both before and during the very act of marriage, clearly indicate that the consent was not free, but coerced and fearful, as in decision 326, paragraph 40 and following, before Gregory. Therefore, the Consultant argues: if consent, which is not free but coerced and fearful, is deduced from tears, complaints, and paleness, then much more can be gathered from the anguish, suffering, and infirmity of Laetitia. Although the girl expressed her consent before the Parish Priest, she confessed frankly that she was so disturbed in that act that she did not know whether she truly consented; but it is certain that everything, both internally and externally, was done by her with a troubled spirit. In the girl's honest confession, we see confirmed what is stated: "that through fear, she may say that she approves of what she hates, and follow the consequences that usually result from forced marriages." It is clear that the girl's consent in this matter was not sufficient to validly contract the marriage, because she lacked the full security required by law, which is an essential condition; and because the girl's confusion, arising from the repugnance and great disturbance of her mind in the act of contracting the marriage, cannot be reconciled with full consent. What truly reveals the lack of full consent in the girl's act of marriage are the events that followed the marriage, or the bad consequences that usually result from forced marriages. Indeed, Laetitia did not want to consummate the marriage on the first night, and she was constantly suffering from anguish; she showed no signs of affection towards her husband, but rather, she nurtured great aversion towards him. Therefore, solely out of reverence for her mother, namely, to avoid her indignation.

[*Latin ed. p. 327*]

In Praenestina, a young woman was joined in marriage. It is not an impediment that the mother was not present during the act of marriage; for the Sacred Roman Rota has already once expressed concern, and this concern still persists. However, there is a just reason for concern and apprehension on the part of the woman, and a falling away from steadfastness on the

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part of the man, when the mother is accustomed to being harsh and to carrying out threats; for in such a case, it is presumed that the woman also feels a reverential fear towards her mother, just as she would towards her father, fearing to displease either parent. (Sperelli, decision 75, paragraph 71). It is not certain that this marriage was valid due to three years of cohabitation; because, according to the Council of Trent, it is necessary that the marriage be contracted before a priest and witnesses. Finally, the consultant noted that all the witnesses testified to the facts, having been spectators when the mother was urging the daughter with insistent prayers, persuasions, threats, reprimands, and entreaties. Therefore, there can be no hesitation; for, according to chapter 14, "there is no place for consent where fear or coercion intervenes." The consultant then asked whether the marriage in question could also be considered null due to the husband's impotence. To answer this question, he said that it is necessary to resolve certain issues: 1. whether it is established from the judicial records that the spouses have lived together for three years and have endeavored to consummate the marriage; 2. whether they have not been able to live together, and therefore the marriage has remained unconsummated; 3. whether the husband's impotence is antecedent and perpetual, if not absolutely, then at least relatively to the joy of marriage. Beginning with the first question, he stated that the spouses affirmed, under oath, that they had lived together and had endeavored to consummate the marriage, and the witnesses confirmed this, as required by the final chapter on frigidity. The woman also added that she had made every effort to assist her husband in consummating the marriage, but in vain. Although the diocesan court cannot obtain an oath from the husband due to his obstinacy, his extrajudicial confession is nevertheless taken into account; for he himself declared, to experts designated by the civil authority to examine his body, that he had made many attempts.

[*Latin ed. p. 328*]

328 PRAENESTINA mina were given to consummate the marriage, but always without effect. The same was confirmed by seven witnesses from the side of the obstinate Placido; and therefore, it cannot be doubted that the spouses themselves often hindered the consummation of the marriage. Going further, the consultant stated: from the judicial records, it is certainly established that the marriage was not consummated; for, according to the disposition of the law, this is proven by witnesses and by the appearance of the body. And first, the spouses themselves confess the lack of consummation; the woman before the ecclesiastical tribunal, the man extrajudicially. Moreover, some witnesses from the side of Placido testified that they had heard from him that he had never been able to consummate the marriage. The seven witnesses, under oath, unanimously confirmed the testimony of Laetitia, and all affirmed that the marriage with Placido had not been consummated. Finally, an examination of the woman's body was carried

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out, in accordance with the requirements of the law. And with regard to this, it is to be noted, according to the unanimous judgment of all experts, that all the physical signs of virginity were present in the woman; and those who examined her affirmed her virginity. Regarding this, Sánchez, *lib. 7, disp. 109, n. 5*, states: "It is sufficient for this, although the signs are not entirely evident, and not necessarily conclusive, if they are reasonably evident." For such signs are of such efficacy, that, without any expected delay, "but with the sole oath of matrons, of the spouses, and of the seven witnesses, they cause the marriage to be declared invalid..." Finally, from the judicial records, the consultant concluded that the man's impotence was permanent, or at least relative, and prior to the marriage. It is well known that there are two principal conditions of extreme impotence, which, according to the best of laws, render a marriage invalid and null: namely, that the impotence must be permanent and prior. It makes no difference whether this permanent and prior impotence is absolute or relative, natural or accidental. These two extreme conditions are verified in the case of Placido, as testified primarily by the medical experts who examined him at the commission of his parents, and by other experts who likewise examined him.

[*Latin ed. p. 329*]

PRAENESTINA 329 was examined by civil authorities, to which the woman had appealed in order that her marriage might be legally dissolved. (1) The same matter was confirmed by seven witnesses, among whom were the patron and the mother of Placidus. The report of the experts regarding Placidus's impotence concluded that, according to canonists, it was incurable and permanent, and therefore the preceding marriage. Indeed, the experts in the aforementioned report, and the witnesses, testified that Placidus had used remedies or medications to attempt to cure his impotence. However, the canonists, considering this legal provision in chapter *fratern.* concerning frigidity and malice, state that this impediment was not permanent, since, apart from a divine miracle, it could be removed by human means, without bodily danger; as Pontius states in book 7, chapter 60, paragraph 4. A permanent impotence is that which cannot be removed by any lawful remedy, according to law and equity. Therefore, it is permissible to conclude that the impotence is permanent, and therefore the preceding marriage; and since the experts and witnesses in the same report affirmed that Placidus's impotence was intrinsic and natural. Finally, the Consultor, abandoning the path of justice, sought the path of grace, inquiring whether there were just and honest reasons for granting a dispensation from the marriage, which had been contracted but not consummated. And he endeavored to demonstrate that such reasons were indeed present, stating: among all the causes for dispensation, the doubt concerning the validity of the marriage shines

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most brightly. And in this matter, this doubt is considered not merely grave, but most grave; because it arises from two heads: namely, from the lack of consent on the part of the woman, and from the head of impotence on the part of the man. Another cause for dispensation is found in invincible repugnance and aversion. (1) When the woman requested that her marriage with Placidus be declared invalid by civil authority, three experts were summoned to examine the case, and their depositions were recorded in the proceedings. These experts, despite their contumacy, presented their opinions after an examination of the body; Placidus was deemed unfit for marriage according to the norm for men. It was not possible to determine whether the sacred canons could be applied.

[*Latin ed. p. 330*]

330 A woman from Praeneste to a man: and there is another fear and danger of fornication, namely, when it involves the ruin of the soul of one or both spouses. OPINION OF THE THEOLOGIAN. After examining the facts, the theologian noted the obstinacy of the man, who, after being summoned six times, refused to obey ecclesiastical authority; and the perversity of the father, whose actions seem to have frightened other witnesses. From this, the judge of the diocesan court reported that he had to work very hard to obtain the testimony of the seventh witness. On the other hand, the woman and her relatives and affine relatives, because of their docility of mind, their obedience, and their clarity in their accounts, proved themselves worthy of all commendation. Then, he inquired as to how Laetitiae entered into the marriage; and first, he noted that, since the year 1871, the parents of both betrothed had begun to discuss this marriage of their children; at that time, Placidus was already eleven years older than Laetitiae. As soon as the mother revealed her plan to her daughter, the latter immediately showed a resistant spirit, as she had thoroughly known Placidus's mental and physical qualities. Indeed, it is established from the testimony of the doctors that, from infancy, an incurable disease had afflicted his nerves, causing a curvature of the back, a slowness of intellect, and a stupor and weakness of speech. But the mother, as if the matter were already firmly established, with a strengthened spirit, repeatedly urged her intentions daily, with tireless talk, with incredible tenacity, and not only with maternal authority, but with a tyrannical power: and she added that she would never allow another to enrich the family of Placidus. Indeed, the girl, resisting, and the mother, constantly insisting, were confirmed by numerous witnesses; so that, apart from the judges' reprimands, she used threats and deceptions. The brother of Laetitiae himself, who was forced by his mother, under the same pretext, to unwillingly take Placidus's sister as his wife, left his father's home, and did not return until after he had entered into marriage with another. Nor should it be omitted that, throughout the entire year, the mother, through a new kind of fraud, sent letters to the

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betrothed, in the name of her daughter; and the daughter was constantly afflicted with anxiety because of the judges' mother.

[*Latin ed. p. 331*]

PRAENESTINA 331: The objections raised pertain to a fever; at that time, she declared that she had prayed to God for death in order to avoid marriage. Witnesses also testified regarding the girl's piety, her utmost reverence and love for her mother, and the weaker nature she possessed when compared to her mother's nature. For, if she saw her mother even slightly angered, her spirit would fail, and she would withdraw to her room to weep and lament; and she would be utterly terrified if she suspected that she might have caused even the slightest annoyance to her mother. The Consultor considered whether such a lack of freedom could be deemed such that it would render the marriage null, either by natural law or by fear. And, above all, he said, no one doubts that mutual consent is necessary for contracting marriage. But obligations arising from consent are void if consent is lacking; all the rules of law proclaim this. Indeed, consent, as St. Thomas teaches in 12 q. 16 art. 2, implies the application of a volitional movement towards something. Therefore, how can anyone say that she consented, when she not only never desired it, but constantly abhorred it, and when she was compelled to do so? Which of them considered that union to be a greater affliction, when, as she said a little earlier, she would rather be joined to a gadfly than to Placido? Whereas, on the contrary, according to the opinion of the Doctors, a more perfect volition is required for marriage than for any other contract. For it is not a matter of alienating something, but of surrendering the very person of one of the contracting parties to the other perpetually, as St. Thomas says in Sup. q. 47 art. 6 concerning perpetual servitude. From these things, he concluded that consent was lacking in her, not by physical force, but by moral force or by reverential fear, by which the girl's freedom was so weakened, and she herself was so deeply wronged, so oppressed by such a weight of cares, that no man, however strong, could ever be afflicted by a greater fear of evils. For what greater torment could be imagined than a mother filled with intense anger, raging, and bearing capital hatred against her? I say, a mother who would rule in the house with a tyrannical dominion, whenever she had conceived some plan in her mind; to whom the husband would scarcely ever dare to contradict?

[*Latin ed. p. 332*]

332. The young woman, Paella, her heart aflame with distress, was devising many plans within herself as to how she might avoid this grievous necessity; now she considered flight, following the example of her brother, but she feared that this would bring dishonor to her family; now she thought of entering a convent for virgins. Her small soul sought refuge and protection, a means of avoiding marriage, but she found none.

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Therefore, overcome by the fear of offending her mother and of incurring her displeasure, she is rather dragged than led, as it were to the altar, and, weeping before the altar, she utters, with great anguish and hesitation, a single word, and in such a state of mental turmoil that she herself could not determine whether the word spoken by her lips was the true expression of her inner consent. From these circumstances, the Counsel concluded that the marriage, of which we are speaking, was null and void by natural law, due to the lack of consent. Indeed, it cannot be considered a minor evil that Laetitia endured for so long, and which she feared from her mother; for in this case, all the conditions are present by which the Doctors define fear. For she was unjustly compelled, the fear was reasonably to be feared, it was instilled by one who threatened, and who was accustomed to carry out his threats, and it could not easily be avoided by any other means. In this matter, since the case involves a situation where fear or coercion intervenes in the matter of betrothal, and where a grave injury has been inflicted upon the unfortunate girl, it pertains to the Church, the judge of justice, to restore the right that has been unjustly violated by the mother, who was giving her daughter in marriage for wealth, and not for love. Regarding Placidus's impotence, he stated that this had been demonstrated by more than three years of experience, and that it was confirmed by the consultations and judgments of physicians; so that there is no possibility of any cure that would make Placidus fit to have relations with a virgin. Therefore, the Counsel concluded that such a marriage should be dissolved for three reasons: namely, because of the lack of consent on the part of the bride, because of the impotence of the husband, or, at the very least, because of the absolute, and in this case, relative, lack of suitability.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE. He said, "Although some of the arguments presented to demonstrate the nullity of the marriage have some force, they are not of such a nature as to constitute conclusive arguments, as is the case in causes..."

[*Latin ed. p. 333*]

In Praenestina, 333 marriages are entirely annulled. And indeed, Laetitia attempted to prove the nullity of the marriage on two grounds: 1. because she did not freely give her consent to the marriage, due to a grave fear instilled in her by her mother; 2. because Placidus Sordi suffered from a prior and permanent impotence that prevented him from consummating the marriage. Regarding the fear, we do not deny that the mother used persuasions, and sometimes even reprimands, to encourage her daughter to enter into marriage with Placidus; but we deny that this fear was unjust and grave, or that it carried with it the conditions entirely required to invalidate the marriage. Indeed, the woman herself testified that no one, except her mother, urged her to enter into the marriage. Furthermore, it is

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clear from the witnesses that the mother's coercion consisted in insisting with words that her daughter marry Placidus, and in once having slapped her. However, it is clear that the father had no influence on the marriage, because the girl had already agreed to the marriage shortly before it was celebrated. But neither can the gravity of the fear be established from the mother's persistent demands. For this gravity depends primarily on the weight of the harm that is threatened, which is instilled in the mind of the person experiencing the fear; and no one can deny that no serious harm threatened Laetitia if she had simply defied her mother's wishes. Moreover, Sperelli, dec. 75, n. 15, 16, 22, teaches that the daughter's fear of her mother's anger is not of the kind required to be considered a constant fear, and is therefore not included in the grounds for annulment. In law, it has been established that not every word or reprimand from parents constitutes a fear that can be considered grave. On the contrary, with regard to the marriage, there are arguments that cannot be dismissed, which place the freedom of the marriage in safety. Before the marriage, Laetitia did things that fostered the negotiations themselves, rather than hindering them, in order to ensure that preliminary negotiations would not be rendered void. But no less important are the things that followed the celebration of the marriage: for many years, Laetitia lived peacefully with her husband.

[*Latin ed. p. 334*]

334. Praenestina testified, and she herself admitted that, although she readily offered herself for the fulfillment of the conjugal duty, she had not yielded to any effort or labor to consummate the marriage. These circumstances sufficiently indicate that Laetitia never considered the marriage with Placido to be invalid, due to a lack of consent, and that any doubt, if it ever arose, has been dispelled by their peaceful three-year cohabitation and the free exercise of marital relations. Speaking of the nullity of the marriage, based on the husband's impotence, it is stated that two arguments are presented to demonstrate that no marriage can be proven null on this basis: namely, it is argued either from the fact of the wife's integrity, or from the judgment of experts. However, it is true that Laetitia is still a virgin; nevertheless, this only implies that the marriage was not consummated. But Placidus has always declared that the marriage was not consummated, because the wife, by all means, even by force, repelled him whenever he attempted marital intercourse. However, the judgment of the doctors, presented by the plaintiff to prove that the marriage could not have been consummated due to the husband's impotence, did not have a better outcome. For the experts stated: "The penis, according to the laws of nature, is perfectly formed; the testicles show a somewhat abnormal structure; nevertheless, no such material abnormality is found that could impede carnal copulation." Nevertheless, the judgment of the doctors should not have stopped there; therefore, they proposed to resolve the doubt as to whether

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Placidus was dynamically capable, that is, whether he experienced such an erection of the penis that would allow him to penetrate the female organ and ejaculate semen within it. Therefore, the experts omitted all experimentation, preferring to reach a negative conclusion based on the fact that the wife is still a virgin, and on the fact that, for three years, the spouses have always slept in the same bed and have made every effort to consummate the marriage, without ever achieving the desired result. However, Vindex argued that, from these two facts, permanent and incurable impotence cannot be proven; for, given the impotence,

[*Latin ed. p. 335*]

Praenestina 335 rightly argues in favor of the nullity of a marriage, but not conversely; for these two things are not so necessarily linked that, once the nullity is established, one can rightly argue for impotence. It also notes that it cannot be certainly concluded from the testimony of the physicians that Placidus's impotence existed before the marriage, and that it is incurable. They refrained from defining whether such impotence was congenital or arose later; and, if it arose later, whether it preceded or followed the celebration of the marriage. As for the permanence, or incurability, of the impotence, they presented not a judgment, but rather an opinion, which they formed based on the fact of the cohabitation and the nullity of the marriage. Against this mere opinion of the physicians stand Placidus's still youthful age, as well as his robust constitution. Whoever, therefore, sees from the simple conjecture of the physicians, will find it impossible to definitively prove Placidus's impotence; since the favor of marriage requires that, as long as conclusive arguments against its existence are not presented, one must always pronounce in favor of its value and strength. However, assuming that Laetitia is still a virgin, and the marriage is unconsummated, is there not a sufficient reason for obtaining a dispensation? All doctors teach that the Popes have always used the power to grant dispensations regarding valid marriages for the good of the Church, for the common good, and to avert grave and public evils; or to prevent quarrels and bloodshed between families, which often arise from ill-omened marriages. Given this, it is easily understood that there is no sufficient reason in this matter for a dispensation from a valid marriage; because all of these circumstances are not present. And if there is some discord between the families of the bridegroom and the bride, the cause of this is that Laetitia, fleeing from her husband's home, with her own will, has tried in every way to shake off the yoke of marriage. Let Laetitia return to her husband who loves her, and the cause of all discord will be removed. Regarding the danger of incontinence, the Consultant states: since no one has dared to absolutely

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affirm the husband's impotence; and since...

[*Latin ed. p. 336*]

336 Concerning the case of Praenestina, since it has not yet been established that the impotence is permanent and incurable, no law prohibits them from living together as husband and wife, and from fulfilling marital duties. With these premises, the purpose was to resolve the following questions: I. Whether it is established that there is a nullity of the marriage in this case. And, to the extent that the answer is negative, II. Whether it is necessary to consult with the Most Holy Congregation regarding a dispensation for a marriage that is valid but not consummated in this case. RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter on July 12, 1884, decided to respond as follows: To I. Affirmative, the man is prohibited from entering into other marriages, without the prior consultation of this Congregation. To II. As provided in the first question. From which the following are deduced: I. Marriage is that which, by the will of nature, is perfected by the full consent of both parties, which consent must be free and free from serious coercion and fear. II. Marriages constitute a single contract, arising from the mutual love of the parties, and which carry with them serious obligations by divine law; the principal of which is the perpetual bond by which the parties are bound. III. Hence, marriages repel all physical and moral pressure; because consent extorted by such serious pressure has no natural proportion to the burdens that arise from the nature of marriage for the parties. IV. And therefore, by the very fact and by the very law of nature, such marriages are null; and in the external forum, they only require the action of a judge to declare them invalid, and not to induce them. V. The judge is not only required to examine whether there is serious or slight fear, and whether threats and violence are expressed; but also the circumstances, the condition of the persons, both of the one who inflicts the fear, and of the one who experiences it; for example, if a son is of a gentle nature, timid and cowardly, and truly subject to the will of his parents, who declare that he entered into marriage under the fear of his parents.

[*Latin ed. p. 337*]

PRAENESTINA 337 VI. The Ordinary and all the witnesses present testify that the girl possesses a gentle nature, is timid, easily frightened, and entirely obedient to her mother, who, being a woman of strong will, is steadfast in her intentions and rules the household with a tyrannical manner. VII. To instill fear through insistent prayers, combined with a reverential dread, can undermine a man's resolve and be sufficient to invalidate a marriage, because this notably diminishes his freedom. VIII. Impotence, which invalidates marriage, ought to be permanent and must precede the marriage, whether it be absolute or relative, natural or accidental. IX. In the

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case at hand, it seems beyond doubt, after the testimonies of experts and witnesses, that the man's impotence possesses these two extreme characteristics: that it is incurable and that it preceded the marriage, as it is a natural and intrinsic condition.

BONONIA. CHANGE OF WILL. August 9, 1884. Through summary prayers.

COMPENDIUM OF THE FACTS. Clotildes Frati, a woman from Bononia, aged 70 years, who suffers not only from old age but also from a weak constitution, declared that since the year 1839, she has received a dowry of 20 scudi, inherited from a certain Hercules Loiani, under this condition: that she would receive the inheritance and its fruits as soon as she either entered into marriage or made solemn vows in a religious house. Furthermore, this woman, up to this age, has neither married nor entered religion; she only wore the habit of the Third Order of St. Francis for one year, and in February of this year, she made her profession, according to the rules of that Order. Now, however, she requests that, considering her miserable condition, [the text is incomplete].

[*Latin ed. p. 338*]

338 BONONIA. Considering the circumstances and the recent issuance of the profession, let it be granted to her to obtain the dowry, mentioned above, and its fruits. The Archbishop stated that the testamentary heir had not yielded anything for or against such a petition concerning the inheritance of Loiano. Furthermore, the Archbishop testified that the petitioner's prayers were based on truth; and he recalled that if any maiden, having been given a dowry, should die before entering into marriage or entering a monastery, another maiden, meeting the necessary requirements, would be substituted for her; and the fruits that had matured at the time when the deceased maiden could have enjoyed them would be added to the fruits of the other dowries deposited in the Marriage Fund.

Synopsis of the Dispute. THE DOWRY SEEMS TO BE DENIED. However, the following points must be considered primarily: every condition must be fulfilled in order that a legatee, or heir, or any other person to whom something has been bequeathed under a condition, may claim it. *L. Si ita stipulatio* [If such a stipulation], *ff. de O. d. L.* [from the books of Civil Law], *cum ad 37 ff. de rebus creditis.* [with reference to books 37 and following concerning credit transactions]. *Text. in Leg. 71.* [Text in the Digest, book 71]. *Si post mortem ff. de Legatis.* [If after death, from the books concerning Legatees], *L. 40 §.* [book 40, section]. *Quidam De condition.* [Certain passages concerning conditions]. This is especially true if the conditions are potestative; see *Rota R. coram Durand, decis. 339 num. 61, 62*; *coram Falconerio De Fideicommissis decis. 60 num. 4*; and *de iure patron. Decis. 8 num. 2*. In our case, however, the condition was imposed by the testator, which suspends the transfer of the dowry until

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the maiden enters religion or has already contracted marriage; and this condition, which is indeed potestative, was not at all fulfilled. Therefore, the transfer of the dowry seems to be neither permissible nor grantable. If it were to occur, the will of the testator would be violated, which, otherwise, must be scrupulously observed, as all laws proclaim. Indeed, the rights of third parties would be harmed, since, according to what the Ordinary states, the dowry of 20 solidi would be given to another maiden, and its fruits would be added to the fruits of the other dowries already given. Therefore, these considerations, based on the petitioner's arguments, certainly hold weight.

[*Latin ed. p. 339*]

BOLOGNESE. 339. It is not valid to say that Clothilde acquired a certain profession; for a will requires a solemn condition, which precludes the possibility of a subsequent state. Therefore, the profession of the Third Order does not seem to be effective. A DONATION SEEMS APPROPRIATE. However, these statements appear to be made according to the strictness of the law. If equity is considered, perhaps there would be grounds for granting the request. It must be remembered that a potestative condition is considered fulfilled whenever it could have been fulfilled, if it were possible; Ulpian, L. 8 §. Concerning conditions, justice, from L. "Either of the brothers," 20 ff. concerning conditions, instituted; L. "For a year," Codex concerning institutions and stipulations. Sacred Roman Rota, Decisions, 35, number 9, page 4, title 1. Indeed, a potestative condition, under which someone is instituted as heir, is fulfilled by doing everything that is within one's power for its fulfillment, Sacred Roman Rota, apud Merlino, decisions, 552, number 2. However, in our case, it is impossible for a woman to fulfill the condition of the institution. For she is burdened by poverty and has now reached the seventieth year of her life, and she cannot enter into marriage, nor can she make a religious profession. Therefore, the condition should be considered fulfilled, and even more so, because the woman, by making the profession of the Third Order, has done all that she could. Furthermore, it is important to remember the sad condition of the supplicant: she is a woman weakened by old age and infirmities, and although the letter of the will might be contrary, it is not unreasonable to suppose that the testator's intention would favor her, especially today, after she has made a profession, in the best way possible. With these considerations, the question was raised as to what should be answered to the woman's petition. RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter, on August 9, 1884, decided to respond: It is not advisable.

[*Latin ed. p. 340*]

340 FROM THE SACRED CONGREGATION, ORDER CONCERNING

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SACRED MUSIC. With the aim of providing a suitable and effective remedy for the grave abuses which have been introduced into sacred music in various churches of Italy, a Regulation has been compiled, which is annexed to the present letter. This Regulation, prepared with great care and diligence by the Society of St. Cecily, with the agreement of ecclesiastical authorities, has already been put into effect in the Archdioceses of Naples, Milan, and elsewhere. This Regulation has received the full approval of the Supreme Pontiff. Therefore, the undersigned, wishing to bring this to the attention of Your Eminence and Reverend Lordship, also requests that you invite those present to take care that the norms contained in this Regulation be received with all due diligence in the churches of your Diocese, since those norms, which pertain to sacred music, are indeed an excellent part of the sacred liturgy, and should be observed with reverence, and that indecent and profane melodies be avoided, as they are unsuitable.

Trusting that Your Eminence and Reverend Lordship, with your prudence and pastoral solicitude, will see to it that all that is prescribed in this Regulation be carried out in the Diocese entrusted to you, the undersigned is pleased to express his most profound esteem.

[*Latin ed. p. 341*]

ORDINATION REGARDING SACRED MUSIC. The undersigned declares, with the utmost esteem and respect, to Your Most Illustrious and Reverend Lordship, from the Secretariat of the Sacred Congregation of Rites, on September 24, 1884. With profound respect, I offer myself to Your Eminence on September 25, 1884. From the Secretariat of the Holy Roman Congregation, with the most humble devotion, Your most humble and devoted servant, LORENZO SALVATI LAURENTIUM SALVATI, Secretary of the Sacred Congregation of Rites. Secret. § L. General Rules Regarding Sacred Vocal and Instrumental Music, permitted or, as they say, figured, whether by voice or by musical instruments, permitted or prohibited in the Church.

ARTICLE 1. The figured vocal music permitted in the Church is only that of which the grave and pious chants are suitable for the House of the Lord and the divine praises, and which, by following the meaning of the sacred word, serve to excite the faithful more and more to devotion. All production of figured vocal music must conform to this concept, whether accompanied by the organ or other instruments.

ARTICLE 2. The figured music of the organ must correspond to the characteristic, harmonic, and solemn nature of that instrument. Instrumental music in general should appropriately support the singing and not oppress it with noise; and the organ interludes or symphonies should always be original and conform to the seriousness of the sacred Liturgy.

ARTICLE 1. The figured vocal music which the Church permits is only that of which the grave and pious chants are fitting for the House of the

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Lord and the divine praises; and while they follow the meaning of the words, they serve to excite the faithful more and more to piety and religion. All production of figured music must be informed by this concept, and indeed, even when accompanied by the organ or other musical instruments.

ARTICLE 2. The figured music, which is said to be accompanied by the organ, must correspond to the characteristic, harmonic, and solemn nature of that instrument. That which is produced by other musical instruments should support the singing appropriately, and not oppress it with noise; and the organ interludes or symphonies, indeed, and truly original, should be in conformity with the gravity of the sacred Liturgy.

[*Latin ed. p. 342*]

342 ORDER CONCERNING SACRED MUSIC. ART. 3. Since the proper language of our Church is Latin, only this language must be used in the composition of sacred music. These motets themselves shall be composed of words taken from the Holy Scriptures, from the Breviary, and the Roman Missal, from the hymns of St. Thomas of Aquin, from another Saintly Doctor, or from other hymns and prayers approved and used by the Church. ART. 4. The vocal and instrumental music prohibited in Church is that which, by its nature or by the form in which it is presented, tends to distract the listeners in the House of Prayer. ART. 4. Vocal music and instrumental music, which the Church condemns, is that which, either by reason of its original type, or by the form in which it is clothed, is suited to distract the minds of the listeners in that which is the House of Prayer. § II § SPECIAL PROHIBITIONS REGARDING VOCAL MUSIC IN CHURCH. ART. 5. It is strictly forbidden in Church any vocal music composed with melodies reminiscent of theatrical and profane performances, or that is fashioned in forms that are exceedingly light and frivolous, such as "Gabalettes" and "Cavalier songs," as they are called; also, monodic melodies exaggerated too much in the manner of the theater. However, solo performances, duets, trios, and even performances by more voices are permitted, provided that they retain a sacred character and are appropriately connected to the rest of the composition. ART. 6. Any music is prohibited in which the words of the sacred text are even in the slightest degree omitted, transposed, altered, or truncated.

[*Latin ed. p. 343*]

ARTICLE 7. It is forbidden to divide the verses of the sacred text in the Kyrie, Gloria, Creed, etc., into pieces that are entirely detached, thereby jeopardizing the unity of the whole, as well as to omit or rush the singing of certain parts of the liturgy, such as the responses to the minister, the Introit, the Sequence, the Sanctus, the "Benedictus," the "Agnus Dei" in the Mass, and the Psalms, antiphons, hymn, and the canticle "Magnificat" in the Vespers. However, the omission of the Gradual, Tract, Offertory, and the verse

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called "Communion" is tolerated in certain particular circumstances, such as a lack of voices, provided that the organ provides the accompaniment.

ARTICLE 8. It is forbidden to mix the figured chant of the Gregorian chant in an improper manner; and therefore, in the solemn chant of the Lord's Passion, in which the *Directorio* must be followed scrupulously, those so-called "musical points" are prohibited. Only the polyphonic melodies of the choir, according to the models of the Roman school, especially those of Palestrina, are permitted to respond.

ARTICLE 9. Any chant is forbidden, the excessive length of which prolongs the Divine Offices beyond the prescribed limits, namely, at midday for the Mass, and half an hour after sunset for the Vespers and Benediction; except for those churches that use privileges or customs that are not disapproved of by the SACRAM MUSICEN.

[*Latin ed. p. 344*]

344. REGULATION: Concerning the Sacred Office, if it is to extend beyond the aforementioned hours, this matter shall be left to the discretion of the Most Reverend Ordinary.

ARTICLE 10. The use of certain vocal inflections that are excessively affected is prohibited, as is making excessive noise when marking the rhythm or giving instructions to the performers, turning one's back to the altar, chattering, or any other act unbecoming of the holy place. Therefore, it would be desirable that the choir stalls not be constructed on the main door of the Temple, and that the performers, insofar as possible, be invisible, according to the prudent judgment of the Most Reverend Ordinary.

MUSIC: Those who are not approved are not admitted: this matter is to be determined at the discretion of the Right Reverend Bishop.

ARTICLE 10. Also prohibited are certain excessively artificial vocal inflections: making too much noise when moderating the music, or when instructing those who sing or play; turning one's back to the Holy Altar; speaking inappropriately; or committing any other act that would be unbecoming of the holy place. Therefore, it is desirable that the choir orchestra not be constructed above the main door of the Temple, since that area is near the Altar where the sacred rites are performed, and that those who sing or play should, insofar as possible, be invisible, according to the prudent judgment of the Right Reverend Bishop.

SECTION III. SPECIAL PROHIBITIONS REGARDING ORGAN MUSIC.

ARTICLE 11. It is strictly forbidden to perform in the Church any part, or as they say, any reminiscence of compositions that are customary in theaters, whether in the performance of dramas, or in the conducting of choirs, of any kind whatsoever: such as: Polkas, Waltzes, Mazurkas,

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Minuets, Rondos, Scottish dances, Varsouviennes, Quadrilles, Galops, Contradances, Lithuanian dances, etc., as well as profane pieces, such as national anthems, popular songs, erotic or humorous songs, romances, etc.

ARTICLE 12. Instruments of music that are too loud are prohibited, such as drums, bass drums, cymbals, and the like, as well as instruments proper to jesters, and the organ.

[*Latin ed. p. 345*]

ORDINATION REGARDING SACRED MUSIC. The harpsichord, or pianoforte. However, trumpets, flutes, drums, and other instruments of a similar nature, which were formerly used by the people of Israel to accompany divine praises, hymns, and the Psalms of David, are permitted, provided they are used with skill and moderation, especially during the "Tantum Ergo" at Benediction with the Most Holy Sacrament.

ARTICLE 13. It is forbidden for anyone to improvise, or as they say, to play freely on the organ, unless someone can do so suitably; that is, not only observing the rules of the art of music, but also those which protect the piety and devotion of the faithful.

ARTICLE 14. The following rules should be observed in musical compositions: The "Gloria" should not be divided into so many separate parts with solo passages of a dramatic nature. The "Credo" should also be composed entirely in succession, and if it is to be performed with musical instruments, the instrumental pieces should be arranged in such a way as to form a well-connected whole. Solo passages and duets arranged in the manner of theatrical singing, with raised voices (or, to put it more plainly, shouts), which distract the devotion of the faithful, should be avoided as much as possible. And above all, care should be taken that the words are maintained in their proper place within the respective text, that is, without any additions or alterations.

ARTICLE 12. Among musical instruments, those that are excessively noisy and clamorous are forbidden; such as the large drum, which is struck with a mallet, or the smaller drum, which is struck with wooden sticks; and also brass plates; as well as musical instruments used by common people; and also the large organ with strings, or the domestic cymbal. However, trumpets, flutes, and instruments made of brass with attached rims (which are also struck with brass beaters), and other instruments of this kind, which the people of Israel formerly used in singing divine praises, are permitted, provided they are used skillfully and with moderation, especially when singing the hymn "Tantum Ergo..." when the blessing of the Venerable Sacrament is imparted.

ARTICLE 13. It is forbidden to sing, or as they say, to improvise freely on the organ, unless someone can, in fact, perform it suitably; that is, not

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only observing the rules of the art of music, but also those which protect the piety and religion of the faithful.

ARTICLE 14. The following should be observed when composing musical pieces: The "Hymnus Angelicus" should not be divided into separate parts with the solo singing of a single voice, in a dramatic manner. The "Symbolum" should also be composed continuously; and if its singing is to be accompanied by musical instruments, the instrumental pieces should be arranged in such a way that they form a well-connected whole. Individual songs, which are arranged in the manner of theatrical performances, or rather, shouts, with that raising of the voice, should be avoided, as they disturb the pious...

[*Latin ed. p. 346*]

ORDINANCES REGARDING SACRED MUSIC. § IV. Provisions to prevent abuses of music in Church.

ARTICLE 15. Every Church should, as far as possible, be provided with its own suitable collection of vocal and organ music appropriate for the needs of the sacred functions or of the respective musical chapel, such as the Parish Collection of Hymns and the inexpensive Collection of Sacred Music published by the Association of St. Cecilia in Milan, at Via S. Sofia, number 1. These and other similar publications are to be understood only as suggestions, and not as imposed, so that any other publication, which might be produced and published by other publishers with the consent of the respective Most Reverend Ordinaries, in accordance with the criteria of this Regulation, may be considered.

ARTICLE 16. Every Church, which wishes to make a suitable selection from the various publications of sacred music, good or bad, which are constantly being produced by different publishers, may obtain the General Catalog of Sacred Music which will be published by the aforementioned Association, in accordance with the statutes approved by the Holy See, or by another publishing house that adheres to the prescribed regulations. This General Catalog is also offered only as a suggestion, so that, as far as possible, abuses may be avoided. Particular care must be taken to ensure that, in each case, the words used, which occupy a place in the sacred text, are preserved, excluding any arbitrary transposition.

§ IV. Regulations to remove the abuses of sacred music which often occur in Churches.

ARTICLE 15. Every Church should have its own proper collection, as far as possible, of vocal and also organ music, suitably arranged for the sacred functions and the choir of singers; such as the Parish Collection of Hymns and the Collection of Sacred Music published by the Society of St. Cecilia in Milan, at Via S. Sophiae, number 1. These publications are to be considered only as suggestions for acquisition; they are not imposed, so

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that any other work, perhaps being prepared and to be published by other publishers, with the approval of the Most Reverend Bishops, in accordance with the present Ordinance, may be published.

ARTICLE 16. If any Church wishes to select the best works from the various compositions of sacred music, whether already published or to be published in the future, it may obtain a General Catalog of Sacred Music published by the same Society, or by another publishing house, in accordance with the statutes approved by the Holy See. This General Catalog is not to be considered as imposed for acquisition, but as a suggestion.

[*Latin ed. p. 347*]

ORDINATION REGARDING THE SACRED MUSIC. I maintain, and I do not impose, this, as in the preceding article. ARTICLE 17. Besides the Repertory of Sacred Music printed, it will be permitted to have one of manuscript music, which is preserved in various churches and chapels, and other ecclesiastical institutions, provided that a proper selection is made by a special Commission named after St. Cecilia, to be founded in all dioceses, with at its head the Diocesan Inspector of Sacred Music, under the immediate authority of the respective Ordinaries. ARTICLE 18. Therefore, only those musical compositions, whether printed or unpublished, which are listed in the diocesan Index-Repertory and bear the appropriate stamp and approval of the Commission of St. Cecilia and its presiding Inspector, will be permitted in the churches. This Inspector, together with the Commission, and always under the authority of the Ordinary, without prejudice to the local superiors, may also supervise the musical performances as they take place, recall to the sacristy the musical pieces performed or to be performed, and verify whether they correspond to the rules and the approved scores bearing the stamp and approval, and may therefore report to the Ordinary and request that energetic measures be applied against those who transgress. ARTICLE 19. (The organ and the choir...)

[*Latin ed. p. 348*]

348 ORDER CONCERNING SACRED MUSIC. Chapel Masters shall devote all their care and skill to the best possible performance of the music in their respective repertoire. They may also, through their expertise, enrich it with new compositions, provided that they conform to the aforementioned regulations, from which no one shall be exempt. The members themselves of the Commissions shall be subject to mutual review of their works.

ARTICLE 20. The execution of the index-repertoire of sacred music, compiled by the Commission of St. Cecily and approved by the Most Reverend Ordinary, is entrusted to individual parish priests or rectors of churches, even under penalty to be imposed by the same in case of transgression. This index-repertoire may subsequently be increased by new musical compositions.

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ARTICLE 21. These Commissions shall consist of ecclesiastics, and also of lay experts in music, and animated by a deeply Catholic spirit. The diocesan inspector shall always be an ecclesiastic. The appointment and institution of all of them rightfully belongs to the diocesan Ordinaries.

Moderatores omni studio in primis sollertiâque curabunt, ut quae in suo Repertorio constituta fuerint, quam optime possint, socii exsequantur. Poterunt quidem et ipsi pro suo ingenio novis illud lucubrationibus augere, dummodo statutis regulis, a quibus exequendis eximi poterit nemo, se opportune conforment. Ipsimet Societatis alumni mutuae suarum musicarum lucubrationum recognitioni obnoxii erunt. A R T . 2 0 . Singulis Parochis, seu Ecclesiarum Rectoribus Indicis-Repertorii per Societatem a s. Caecilia compositi, et per Rmum Episcopum approbati exsecutio commissa est, etiam, siquid contra attentari contigerit, ab ipso in transgressores imposita poena. Huiusmodi Index seu Repertorium novis deinceps musicis lucubrationibus poterit, ut dictum est, augeri, A R T . 2 1 . Hae Societates ecclesiasticis viris, atque etiam laicis musicae artis peritis et catholico Spiritic medullitus informatis, componentur. Inspector dioecesanus non alius, quam ecclesiasticus vir erit. Eorum vero nominatio atque institutio ad Rmum cuiusque Dioeceseos Episcopum iure pertineat.

[*Latin ed. p. 349*]

ORDINATION CONCERNING SACRED MUSIC. § v. Provisions for the improvement 349 § v. of sacred music in its schools, so that they may be made better in the future.

ARTICLE 22. To prepare a better future for sacred music in Italia, it would be desirable that the Most Reverend Ordinaries would strive to found or perfect, wherever they already exist in their ecclesiastical institutions, especially in seminaries, schools of figured music according to the most perfect and established methods. For this purpose, moreover, it would be appropriate that special schools of sacred music be established in the principal centers of the peninsula, to train good singers, organists, and chapel masters, in the same way that has already been commendably practiced in Mediolani.

ARTICLE 23. This regulation will be communicated to all the Most Reverend Ordinaries, who will bring it to the attention of the clergy, organists, and chapel masters of their respective dioceses, and it will have force one month after the aforementioned communication by the Ordinary. Furthermore, this regulation must be posted on a suitable tablet in the church, next to the organist's lectern, so that it may never be violated for any reason.

ARTICLE 22. For the sake of a better condition of sacred music, to be attained in the future in Italia, it should certainly be hoped that the Most Reverend Bishops would strive to found, or, if they already exist, to perfect, in their ecclesiastical institutions, especially in seminaries, schools of figured music according to the most perfect and proven methods. Further-

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more, for this purpose, it would be appropriate to establish special schools of sacred music in the principal places of our peninsula, to train the best singers, organists, and chapel masters, as has already been commendably done in Mediolani.

ARTICLE 23. This present Ordinance will be delivered to all the Most Reverend Bishops of Italia, who will make it known to the clergy, organists, and chapel masters of their respective dioceses; and it will begin to have force one month after the transmission by the Bishops, as we have said. Furthermore, this Ordinance must be posted on a suitable tablet in the temple, near the lectern of the organist, so that it may never, by chance, be neglected or violated.

[*Latin ed. p. 350*]

350. SAINT PAUL OF MINNESOTA. Letters in which the matter is brought up of performing a new consecration over altars whose first consecration was doubtful. To the Most Reverend Father. Your Eminence, in this Diocese there are more than two hundred portable altars which have been consecrated in such a way that the repository for the relics was covered not with marble, but with sealed wax or gypsum, and this is affirmed. Therefore, Your Eminence, doubting the validity of these altars, inquired of this Sacred Congregation for the Rituals whether such a consecration is valid, or rather, whether it should be repeated? The aforementioned Sacred Congregation, after hearing the opinion of another, from the Master of the Ceremonies of the Apostolic See, and of the Reverend Assessor of the same Sacred Congregation, decided to declare: The altars in question require a new consecration. Moreover, the Most Holy Pope Leo XIII, at the suggestion of the same Secretary of the Sacred Congregation for the Rituals, graciously granted a dispensation from repeating the consecration of these same altars, so that this may be done gradually, taking advantage of opportunities as they arise, without any time limit as prescribed by the aforementioned, according to the shorter rite established in similar cases; namely, that the Most Reverend, either personally or through simple priests, delegated only in this case in the name of the Apostolic See, place certain relics of the Saints in the same altars, observing only those ceremonies which are prescribed in the Roman Pontifical when the relics are placed in the repository and a stone is placed on top, namely, that the repository, or the place where the relics are to be placed, should be signed with the sacred chrism, and in the meantime, the Prayer of Consecration should be said, and the place sanctified; afterwards, after the relics have been placed with three grains of incense, and the lid has been placed on and secured, the second Prayer should be said: "O God, who by the cohabitation of the Saints..." and nothing else. Communicating this to Your Eminence, I earnestly implore your blessing. Your Eminence, in Rome, on the 9th of September, 1880.

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Your Brother. To the Most Reverend Father, Your Brother, the Bishop of Saint Paul of Minnesota.

[*Latin ed. p. 351*]

351 FROM 8. CONG. S. R. U. INQUISITIONIS: A QUESTION regarding the promulgation of the decree *Tametsi* in missions, and quasi-parishes in America. Dated November 14, 1883. The Bishop of St. Hyacinth in the Canadian region reports to the Holy Congregation of the Inquisition that doubts now arise concerning the validity of certain marriages contracted without the solemnity required by the decree *Tametsi* of the Council of Trent, in missions or quasi-parishes of this diocese. Before the year 1872, many places in the Diocese of St. Hyacinth, formerly known as Cantore, were not yet canonically divided into parishes. In these places there were: 1. Properly called missions, that is, without a resident priest; but visited by a missionary, delegated for this purpose, at fixed and unequal times throughout the year. 2. Quasi-parishes, by which is understood a territory which, in its external appearance, more or less resembled a parish, having a church near which a priest ordinarily, or at least principally, resided, and boundaries designated by the Bishop. However, in these missions and quasi-parishes, as well as in properly called parishes, the decree *Tametsi* of the Council of Trent had been annually promulgated by the priests in charge. For this purpose, the Bishops of the Province of Quebec had ordered: "Since the Council of Trent, by a solemn decree, chapter 1, session 24, concerning reforms of marriage, declared that marriages contracted outside the presence of the parish priest and witnesses, whose number is determined by law, are of the greatest importance, we consider it necessary that the parish priests and missionaries inform the people about such a salutary decree. Therefore, we wish that the same decree be read in the assembly on the first Sunday after Epiphany." The publication of such a decree is more appropriate in newly established parishes or missions, according to the nature of the prescription of the same decree and the response of the Holy Congregation of Propaganda Fide to the Bishop of Quebec, dated October 16, 1824. Since he doubts whether the Tridentine decree can be validly promulgated outside of properly called parishes, he humbly requests that the Holy Congregation declare: "Whether the promulgation of the decree *Tametsi* of the Council of Trent is valid in the aforementioned missions and quasi-parishes?"

[*Latin ed. p. 352*]

352. QUESTION: To whom did the General Inquisitors give their response on the aforementioned day? ANSWER: "According to what has been explained, the affirmative answer is: In places where a parish priest cannot be present, a valid marriage can be celebrated before two witnesses; however, the contracting parties are not obligated to receive, as soon as it is

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possible, the nuptial blessing, and to ensure that their marriage is recorded in the sacramental registry of the mission, or of the nearest Church, to which they are subject." On the same day, the Most Holy Father approved this resolution.

EXTRACT FROM THE DECREE OF THE SACRED CONGREGATION FOR INDULGENCES, granting certain Indulgences with attached conditions.

In ROMA, Peter Bugarini, a Roman priest, humbly prostrates himself before Your Holiness and earnestly requests that priests, while devoutly reciting the following prayer in the established sacred rites, be granted divine assistance for the proper fulfillment of their duties. He prays: "O Jesus, most beloved, who, out of singular benevolence, have called me, before countless others, to follow You and to attain the exalted dignity of the priesthood, I beseech You to grant me Your divine help for the proper fulfillment of my duties. I pray You, Lord Jesus, that You may revive in me today and always the grace that was in me through the laying on of the hands of the bishops. O most powerful Physician of souls, heal me in such a way that I may not relapse into vices, and that I may flee all sins: and that I may be pleasing to You until death. Amen."

The Most Holy Father graciously grants an Indulgence of three hundred days to those who recite this prayer. Furthermore, He grants an Indulgence of one hundred days to those who devoutly recite the following ejaculation: "O Good Jesus, I ask You through the love with which You love Your Mother: and just as You truly love and desire to be loved by Her, so grant that I may truly love Her."

His Holiness Pope Leo XIII has graciously granted, to all those for whom the Indulgences have been requested in these prayers, who, at least with a contrite heart, recite the aforementioned prayers, the Indulgences once a day. This grant is valid perpetually, without any specified time limit, notwithstanding any contrary provisions.

Given in ROMA, from the Secretariat of the aforementioned Sacred Congregation, on the 14th of August, 1884.

L. & S.

CARDINAL BONAPARTE, Prefect.

FRANCIS DELLA VOLPE, Secretary.

[*Latin ed. p. 353*]

353 FROM THE HOLY CONGREGATION OF THE COUNCIL OF VIENNA, ON MARRIAGE, August 9, 1884. With a prior Apostolic dispensation granted concerning the impediment of disparity of cult, the noble maiden Joanna of Vienna, twenty-five years of age, on September 26, 1874, entered into a religious marriage with Albert Othmar Haupt of London, thirty-four years of age, of the Lutheran confession, but with the promise

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made to raise any offspring in the Catholic faith. However, the outcome of this marriage was unhappy; for the husband repeatedly attempted, in vain, to consummate the marriage with his wife, spilling seed outside of her at times, due to improper emissions. Furthermore, the husband, having squandered all his possessions, abandoned his wife, and now wanders here and there. Regarding this, the unfortunate woman petitioned the Apostolic See for a dispensation concerning her marriage, which was not ratified nor consummated. The Archbishop commended the woman's prayers while transmitting a bundle of documents to Rome. The proposal of the case was notified to the husband, who refused to appear. SUMMARY OF THE FACTS. A SYNOPTIC DISCUSSION IN DEFENSE OF THE WOMAN. The Advocate stated that a judicial investigation had been initiated with the utmost severity and prudence; so that not even the slightest flaw could be overlooked. The husband himself was invited on several occasions, albeit in vain; but the Court appointed a defender ex officio, who would defend the rights of the husband. There were no witnesses on the husband's side; however, this cannot in any way be considered a defect; for this is not a matter of the nullity of the marriage by reason of impotence, but of a dispensation; so that...

[*Latin ed. p. 354*]

354 VIENNA. Concerning the integrity of the actress, let the causes for dispensing with the marriage be clarified by the testimony of those who know her. Furthermore, even if the controversy concerns impotence, as stated in chapter "Laudabilem" concerning frigidity and malice, only those witnesses of the seventh class should be presented who allege the impediment; thus, if both agree, both must present witnesses of the seventh class. But if one confesses, and the other remains silent, then "only seven near relatives of the one confessing must swear," according to Sánchez, book 7, dispute 109, number 15. Indeed, even if one confesses, and the other does not remain silent but denies, witnesses of the seventh class are to be presented only by the one asserting; as stated by Sánchez in the aforementioned passage. Ferraris, in his library, under the word "marriage," article 6, number 45, states: "If one spouse denies, and the other affirms... only seven from the side of the one affirming are to be presented." The opinion of the Doctors originates from the spirit of the law, or from chapter "Literae Vestrae" 7 concerning frigidity and malice. For witnesses are to be presented so that the spouses may not confess to a subsequent consummation in fraud. Therefore, if one of the spouses confesses nothing and refuses to appear in court, suspicion of fraud cannot arise, nor can his credibility be questioned for having said nothing. And it is all the more necessary to seek witnesses for the man, since the aforementioned chapter of "Literae Vestrae" concerns the spouse who was prepared to follow the counsel of the Church. In this case, the man not only refuses the counsel of the Church

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but also does it an injury. The examination of the woman was performed by distinguished men in the field of obstetrics, and without bathing. However, it is first used throughout all of Austria, as approved by the Holy See, as indicated in: "Instructio pro iudicibus ecclesiasticis Imperii austriaci quoad causas matrimoniales," which, in chapter 166, speaks of expert testimonies, and not of midwives. The woman could not tolerate bathing; nevertheless, without bathing, the Sacred Congregation has frequently judged concerning virginity, as can be seen in the marriage case of March 31, 1863, and in the marriage case of Padua on September 23, 1865.

[*Latin ed. p. 355*]

VIENNA. 355 Having made these preliminary inquiries regarding the judicial investigation, the defender stated that two things are required in order to grant a dispensation: first, that the marriage has not been consummated; second, that there are valid reasons for granting the dispensation. To prove the lack of consummation, the testimony of the woman was first heard, who, when questioned by the Judge, responded: "Now I clearly understand what it means to consummate a marriage, although, during my life in consort with my husband, I did not have such a clear understanding of this matter. And for this reason, I affirm with complete certainty that my marriage with my husband was never consummated." Furthermore, learned witnesses, with unanimous agreement, testified that the marriage had not been consummated, having received this information either from the woman herself or from physicians; and all of them testified that she is honest, religious, and entirely incapable of lying. The Judge of the Court, in addition to the judicial experts, also consulted a renowned physician and obstetrician, who expressed their opinion regarding the woman's integrity. However, of the three judicial experts, two clearly stated that the woman appeared to be a virgin; while the third stated that, based on his observations, it could not be definitively said that the woman was a virgin, because the hymen, upon entering the vagina, was found to be relaxed, and in two places, somewhat fringed, and with a small opening. However, the defender argued that the difference between this testimony and the others was more apparent than real. Nevertheless, if it were to be true and of significant importance that the physician completely declared the woman to be unchaste, then one judicial expert would be considered, who, contrary to the two other experts appointed by the Judge, contrary to the opinion of the other physician, and contrary to the sworn testimony of the obstetrician, would state otherwise. However, it is established by law that, among several experts, those who are more in agreement with each other should be given greater weight: *Rota in dec. 55, no. 14, vol. 1, chap. Olivatio; in dec. 37, no. 4, chap. Emerix jun., and in dec. 554, no. 4, Rec.* – *ibid.* – "But if the other two are in agreement... then they are given more

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credence than the third who disagrees."

[*Latin ed. p. 356*]

356 VIENNA. The same jurisprudence applies when assessing the evidence of witnesses if they disagree among themselves: namely, the majority opinion prevails over the others. This is stated in the Rota in Decree 374, number 6, paragraph 3, and in Decree 124, number 23 and following, paragraph 5, volume 1. Experts, however, should be considered more as assessors than as witnesses, as Cardinal De Luca points out in *De Iudiciis*, section 33, number 20, and Abbot [name missing] in chapter 4, on evidence, number 3. "When a matter is to be proven in which the Judge is not instructed, nor can be instructed... appeal must be made" to the judgment of experts in that art; and according to their testimony, the judge renders his judgment. Thus, when there is doubt about virginity, recourse is had to matrons. But it has always been the accepted practice in judgments that judges, in greater number, should render a judgment, even if others dissent, in very serious matters concerning the status of persons, marriage, rape, capital offenses, and freedom. Therefore, when expert assessors are present, the judgment of the judges must be based on their opinion. Although, the defender argued, they have disputed this up to now, as if there were a true disagreement among judicial assessors: this is entirely untrue. For not only did a third doctor never affirm that the virginity had been violated, but rather, he clearly judged in favor of virginity, so that his words should be understood correctly. Indeed, after some time, the doctor, realizing that he had been too diligent, explained his opinion and concluded that the marriage had not yet been consummated and that the woman had not yet been defiled. Since these things are so, and since no disagreement is found among the assessors, and since they have all given their support for the woman's integrity, either their conclusions should be heeded, or the arguments for integrity that they presented should be considered in order to render a judgment. But in matters that pertain to art and science, credence must be given to the judgment of art and science, and therefore to the conclusions of the experts. However, it must be noted from the beginning, the defender said, that no one of the assessors doubted the existence of the hymen itself. But, in order to determine the woman's integrity, in general...

[*Latin ed. p. 357*]

VIENNA. According to the opinion of 387 doctors who have taught on anatomical matters, perfect and absolute integrity of the hymen is not required, but the existence of its membrane is sufficient, and it should be considered: Devergie, *Medicina legale*, vol. 1, cap. 4; Zacchia, *Quaestiones med. leg.*, lib. 4, tit. 2, quaes. 1, n. 2; Bartholin, *Institutiones*, lib. I, cap. 31. Indeed, it would be absurd to require a completely unbroken hymen, for there must always be some opening for the necessities of the

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body. Therefore, it is not considered detrimental to the integrity of the hymen if there is an opening through which a finger can gently be inserted. Thus, the experts rightly declared the hymen to be fully preserved in the woman, even though there was a small opening. But another, equally serious, matter has been overlooked by the experts. It is clear that the husband from El-Kef was frequently afflicted with syphilis. This is not only testified to by the woman who heard the man subject himself to intense medical treatment, and indeed, to sexual relations, but also by others. Therefore, it is not surprising that a man suffering from such a disease has caused those small injuries, which the experts called "fimbriae," on the woman's body. For the virulence of syphilis is such that, with even the slightest contact, it can contaminate the softer parts, although these blemishes have nothing to do with the consummation of marriage. Therefore, it is not surprising that, after the man made repeated attempts, he transmitted the poison to the woman, and that this caused the fimbriae. Although, for the sake of thoroughness, the defense has argued thus far. It is indeed required for determining virginity that the hymen be present, not its absolute and perfect integrity. And the reason is clear. For when the hymen is broken in carnal copulation, lacerations are formed which are visible to the naked eye, and because of their shape, they are called "myrtle berries" (*carunculae myrti*). Therefore, it always happens that if the hymen is present, the myrtle berries are absent; if the myrtle berries are absent, the woman must be considered intact. In this case, none of the experts found any myrtle berries, nor did anyone suspect their presence, and indeed, some even stated that they were completely absent. This, the defense maintains, is clear, but even more...

[*Latin ed. p. 358*]

358 VIENNA. It will be so, if the jurisprudence is considered, which the Sacred Congregation has always held in high regard in matters of this nature. For, not only in cases similar to these, but in others far more serious, a dispensation has been granted, provided that, not from one judgment alone, or from another, but from all considered together, the woman's integrity and the lack of consummation of the marriage have been demonstrated. Thus, in the case of the marriage in Venetia, on July 28, 1860, a very serious laceration was present, along with the destruction of the hymen, and also the existence of myrtiform caruncles. However, since those who examined the case believed that such a laceration was due to other causes, the sacred order declared the marriage null. The same was done in the case of the marriage in Neapolitana, on August 18, 1866, and in the case in Ianuen, regarding a dispensation, on June 9, 1866; in which the proposed formula for inquiry – Whether one should consult with the Most Holy [Father] regarding a dispensation, etc. – on June 9, 1866, received the response – Affirmative. Finally, a case far more serious was presented recently, con-

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cerning the marriage on February 5, 1876, in Ratisbon. (1) Therefore, the defender concluded: if you wish to fulfill the role of the experts, all the evidence and arguments demonstrate the woman's virginity. The hymen is present; the caruncles are absent. That small opening can be disregarded, both because the size of that opening does not exceed the natural width of the passage, and because it can be either naturally present or induced in many ways. Having stated these things, the defender, proceeding to the causes for a dispensation, said: In this case, besides the common causes, there is a doubt of impotence due to venereal disease, which has so weakened and altered the man's constitution and appearance that he appears feeble and sickly. It is no secret how easily permanent impotence follows the French disease. Another argument for impotence is demonstrated by the premature emission of semen in unsuccessful attempts, which, according to the woman, occurred very quickly. Given these circumstances, it is certainly clear that, either due to extreme coldness or due to weakness, the man is unable to penetrate the woman's womb, according to the opinion (1) This is found in Volume I, page 303.

[*Latin ed. p. 359*]

VIENNA. Received by unanimous consent, as stated by Sánchez de Matrimonio, book 7, paragraphs 93 and 94. These types of individuals, although they may not be considered frigid in the strictest sense, are nonetheless equivalent to the frigid in their effects, as all physicians and authors of canon law teach: Soto, book 4, sentences, distinction 34, question 1, article 3; Zacchias, book 3, questions on moral law, title 1, question 5, number 11 and following. "I would say that those are more aptly called frigid," who are not lacking in excessive heat or the sharpness of seed, but are polluted before they reach their purpose, due to a weakness in retention... "I certainly consider these to be among the frigid," since there is no difference whether they ejaculate or not, if they are completely unable to have an erection due to their coldness. In these circumstances, the briefest manifestation of an erection can be called nothing other than a spurious erection or a semi-erection: Cocchius, disputations on physics and anatomy, section 9. Finally, the most serious argument for impotence is the prolonged cohabitation of four years. Joanna never allowed the marriage to be consummated, but she did so deliberately. But if, after such a long period of time, the marital act has not been fulfilled, there is certainly no hope that he will ever be able to fulfill it in the future. If a man wishes to feign impotence, he will always return to the fact that the consummation of the marriage has been lacking, even after using his strength for more than four years. Therefore, he has not been potent up to this point. Thus, there is a physical certainty of at least temporary impotence. Suppose for a while that it is not permanent: suppose it is curable; but with the temporary impotence established, this alone is sufficient for a dispensation, due to

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the obvious danger of incontinence and the precarious condition of the future: Cocchius, loc. cit., number 281; Fagnan, in chapter "Verum" under number 11 on conversions; Pignatelli, consutation 147, number 10 and following, volume 4; Menoch, on dispensations, book 2, presentation 10, number 42 - ibid. - "The sin of conjugal fornication is a just cause for a dispensation from marriage." In this case, not only the soul but also the body suggest a dispensation. For the actress's health is already...

[*Latin ed. p. 360*]

360 VIENNA. Formerly, it was so weakened by frequent and fruitless efforts of the husband, spanning a period of four years, that it has been subject for many years to continuous medical treatment. Therefore, no one will consider it appropriate to urge Joanna to continue living together. Furthermore, the Viennese judge has noted: that the unfortunate woman leads a miserable and most sorrowful life; that her husband, a devotee of the Lutheran sect, can easily obtain a dissolution of their marriage and proceed to other nuptials. Finally, it must be noted that such great aversion and discord exist between them today that no hope of reconciliation can arise. This alone, even if other factors were lacking, would certainly require a dispensation: *De Luca de matr. disc. 9 num. 8; Lancellotti penes Ursayam tom. 3 par. 2 disc. 21 not. 62; Clericat. de sacr. matr. dec. 15 sub num. 45; Corradi in prax. dispens, lib. 8 cap. 7 num. 33.* But no one will believe that true harmony has persisted between the spouses when the woman is daily tormented by futile efforts, when her bodily suffering increases day by day, and her health declines, when she is distressed by the reckless extravagance of her husband in gambling, in which he has squandered so much of the patrimony, that it has brought – despite her being instructed in good arts and sciences... – her to the point of experiencing poverty in the highest circles. Given these circumstances, the aversion between the spouses in a marriage, which cannot exist without mutual affection, provides a most urgent and valid reason for a dispensation. *Pignatell. tom. 1 cons. 148 num. 9.* Indeed, Coscius, in *de sep. thori lib. 3 cap. 2 num. 117 seq.*, states that it is advisable to seek a dispensation as soon as possible, using these words: "To remove these evils as soon as possible, it does not seem appropriate to instruct the judge to dissolve the marriage through the rigid path of justice, which the flame of litigation and the length of time only increase hatred and further exasperate the minds, but rather, a dispensation should be requested from the Supreme Pontiff through the path of grace, who should be more inclined to grant this dispensation for this reason."

[*Latin ed. p. 361*]

VIENNE. 361. OBSERVATIONS CONCERNING THE HOLY OFFICE. It was noted that the legal formalities in several cases had been scrupulously observed in the Viennese court. However, it was deemed gravely objection-

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able that the examination of a woman had been entrusted to physicians rather than to midwives, as this was contrary to the Instruction of the Holy Congregation of 1840, which had been transmitted to the court; and according to which, the use of the bath, for the proper determination of a woman's virginity, had been expressly prescribed. Therefore, a grave injustice has been done to the Holy Congregation, due to the great temerity with which certain physicians dared to impose their opinion on the episcopal court, asserting that the bath was superfluous and contributed nothing to determining the state of the woman, and also due to the great weakness with which the court itself adhered to their opinion, having thus sanctioned something so beneficial in matters of determining marital status. For it is of such importance that the prescribed rules be religiously observed, as it is important that what is to be proven be proven legally and legitimately, in order to obtain a dispensation. Furthermore, since the physicians had usurped the place of midwives in the Viennese court, through whose assistance the natural state of the woman was to be determined, it was entirely reasonable that the same laws should be observed by the physicians, which are precisely defined for midwives by the Holy Congregation's Instruction. Moreover, among other things, it is prescribed that "after the bath, the Matron and the midwife must always be present, and no time, or moment, must be given to the woman, so that she may use any medicine, or any trick, to prevent the individual examination of her body." With this peremptory instruction, it was incumbent upon the Viennese court, having chosen to employ physicians, to ensure that all of them were present together at the examination, so that each could perform their individual examination. However, this precaution was entirely disregarded; for the physicians approached the body of Joanna one after another to examine it. Moreover, since the examination of a woman who claims to be a virgin is extremely delicate and fraught with dangers, and since, for the sake of decency, the presence of a judge was impossible during the examination, it was deemed necessary that the execution of this most difficult task be...

[*Latin ed. p. 362*]

362 VIENNA. There ought to be present a virtuous matron, who, as it were, represents ecclesiastical authority, and a president, so that all things may be conducted accurately and without deceit, as those things which are to be observed are prescribed. This matron is to be appointed, as is stated in the praised Instruction* by the judge himself; the woman who is to be examined is to be brought to her house; moreover, it is the duty of the matron constantly to provide personal assistance, whether when the woman is immersed and remains in the warm water bath, or when the examination of her body is carried out. Finally, after the obstetric and expert examination, the matron herself must also undergo an examination regarding the assistance she has provided during the entire bathing and

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examination. Indeed, with incredible audacity, he says, all these things were disregarded in the judicial examination; for the matrons, who were to be present at the examination and to report on the examination, are not even mentioned in the report of the examination of the woman's body. Therefore, he concluded, such an examination ought to be entirely rejected, since it was carried out contrary to the canons, and was devoid of all those aids and solemnities from which the judicial value for establishing the truth depends. Regarding the alleged consummation of marriage, he does not hesitate to testify that the testimony of seven witnesses fully supports the assertion of the woman who claims to be a virgin; but in a case of little importance, he says that such testimony is of little value; for, 1. among those who were heard, some from the beginning rejected the marriage of Joanna, others advised her to institute this judgment; and all of them desire nothing more than that this unhappy bond* be dissolved: 2. The witnesses of seven witnesses provide no fact or judgment whatsoever from which at least an opinion can arise that the marriage was unconsummated, but they merely allege the husband's lack of virility, or, from the supposed integrity of the woman, they argue for the unconsummation of the marriage. 3. It is beyond dispute that the testimony of seven witnesses, by itself, can only provide an indication of whether or not marital intercourse has taken place, but certainty can only be derived from a properly conducted examination of the body and the judgment of physicians.

[*Latin ed. p. 363*]

VIENNA. 363. After hearing the testimonies of experts, both oral and written, concerning the condition of the woman, it became clear to the court that: 1. The natural state of Joanna had not been investigated in the same way by all the experts; indeed, they contradict each other regarding the condition of her state; 2. The judgment rendered by them concerning whether or not the marriage had been consummated was divided. Therefore, it is easily understood that the judgments concerning the integrity of Joanna, which the medical experts presented, are only as valid as the observations from which they were derived. Since the observations made by the doctors regarding Joanna's body are uncertain and contradictory, their judgment must also be considered uncertain and of no value. Consequently, in this case, the Supreme Pontiff could not obtain that moral certainty regarding the lack of consummation of the marriage, which is absolutely necessary in order to exercise the power of granting a dispensation from a valid but unconsummated marriage. While, on the one hand, a very serious presumption in favor of the consummation of the marriage arises from the very fact of the prolonged cohabitation and sleeping together, on the other hand, no evidence is presented, nor can be presented, to prove the integrity of the woman; therefore, the judicial investigation is subject to several and substantial flaws, and the inspections of the experts are neither legitimate nor

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accurate, nor, at least in those matters of the greatest importance, are they in conformity. Furthermore, the defender made several objections against the argument of the accuser, stating that the alleged discrepancy between the witnesses was obscure and not genuine, and that the nature of the question being considered should not be distorted or altered. The question is whether it can be certainly and reliably established that the marriage has not been consummated. This question is entirely different from the question of whether it can be certainly and reliably established that the marriage has been consummated. When the latter question is raised, he who contends that the consummation does not exist is not required to do anything other than to present evidence or refute arguments.

[*Latin ed. p. 364*]

364 VIENNA. Those things which are alleged for the consummation [of marriage]; but he who asserts that the marriage has been consummated, bears the burden of positively demonstrating his opinion, excluding all other hypotheses that could be adduced to demonstrate the woman's lack of defloration. Conversely, when the question is raised initially, he who maintains a negative opinion remains victorious, as long as even the smallest probability supports the woman's lack of defloration; but he who defends a positive opinion, will not present any argument until he has presented evident reasons that exclude the fact of carnal intercourse. Furthermore, when requesting a dispensation from a valid but unconsummated marriage from the Holy See, he who invokes the use of this supreme power, must not simply deny that the marriage has been consummated, nor merely present arguments from which it can be argued that the lack of consummation is probable, or even highly probable; but he must present conclusive reasons from which it is certainly and clearly evident that the marital union has not taken place at all. Indeed, the favor of marriage, and indeed the reverence for divine law, absolutely requires that the pontifical power be applied in the same way as when there is no possibility of doubting the integrity of the woman: for if any suspicion or doubt exists to the contrary, however small the probability that favors the woman's virginity may be, the safer course must always be chosen. Hence, it has happened that whenever the Holy Office, in matrimonial cases of this kind, has discovered even the slightest possibility that the union may have actually taken place, it has firmly resisted the petition for prayers and has considered the dispensation to be denied, as can be seen in Wormatia, marriage, January 23, 1634; Hispalensis, March 14, 1738; Chiensis, December 15, 1792. With this doctrine established, he says: "If the question were whether Joanna was truly defiled, I myself would give the strongest vote in favor of Joanna, a witness who has repeatedly affirmed that Joanna's corruption cannot be asserted with certainty; and the changes that occur in her genitals can be explained either by a congenital defect, or by some other cause distinct

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from the marital act." But the question is not this, but another, namely, whether Joanna was certainly not defiled; to which question he responds:

[*Latin ed. p. 365*]

VIENNE. In the year 365, a witness, differing from the others, declared: "It is most certain... that it should not be said that the woman is still in the state of virginity." From these words, Vindex deduced that nothing of substance was added to the assertion of the woman's virginity, according to his own judgment, which, when the judge of Vienne inquired, was presented by two other witnesses. These individuals did not examine the body of Joanna at all, but only subjected the accounts and testimonies of three judicial witnesses to examination, and they asserted, with a declared opinion, what they considered to be true based on this examination. Finally, it is not necessary to resort to the existence of the hymen in order to prove virginity in a woman, even if the hymen is torn: from which it should be said that virginity has not been violated. This argument, at that time, would have had some force if the physicians, in the texts presented, had taught that, whatever the condition of the hymen, even if fringed, it is undoubtedly a sign of virginity. But the physicians taught nothing of the kind; therefore, according to their opinion, this argument is wrongly adduced in favor of Joanna's integrity. Given this, the argument is turned against the opponent. To say that the mere existence of the hymen, even if torn and fringed, is an undeniable sign of virginity is so far from the truth that the most learned physicians, both ancient and modern, do not consider the existence of an intact hymen to be a certain and infallible mark of virginity. This is taught by Zacchias, quaest. Medio, leg. lib. 4, tit. 2, quaest. 2, cited from the opposing side. Among the more recent writers, there are many who not only consider this safeguard of virginity to be of little importance, but also go further, believing that it is by no means necessary for conception and generation that the male semen be poured into the inner parts of the female organs, but that it is sufficient that such semen be poured and applied to the external surface of the same organs, or to the mouth of the vagina, or to the entrance. Thus, Vallisnieri, *Istoria della generazione del Vuomo*, part 1, chapter 8, n. 7, and part 2, chapter 13; thus, in the *Dizionario classico di medicina interna ed esterna*, at the word "Impotenza," Venice, 1834; and also in the *Dizionario di Medicina, Chirurgia e Farmacia pratiche*, Venice, 1840. And so...

[*Latin ed. p. 366*]

366 VIENNEN. Finally, Fleury in his work entitled "Traités thérapeutiques et cliniques d'hydrothérapie," Paris 1866. But such remedies are not needed in this case, since, as has been demonstrated thus far, the tearing of the hymen in the body of Joanna could have occurred as a result of the consummation of the marriage, as a dissenting expert believes. This alone is

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sufficient to say that it does not follow that the marriage is still simply valid and never consummated, and therefore it lacks the primary and principal condition for granting the requested dispensation. The defender, regarding the reasons presented by the plaintiff for the dispensation, stated: Although these reasons may evoke compassion, they never suffice to warrant granting a dispensation, because their foundation is lacking, since there is no certainty regarding the lack of consummation. Furthermore, he added, another observation, which greatly diminishes the force and efficacy of the reasons presented. Whatever misfortunes Joanna has suffered and is suffering as a result of the marriage, it is nothing other than a natural consequence of the recklessness with which she wished to marry a non-Catholic man in every way, against the wishes of her parents, and, what is more, against the will of the Church, which laments "that among Catholics, who are shamefully demented by insane love, there are those who do not abhor these detestable marriages, which the holy Mother Church has perpetually condemned." (Benedict XIV, in Bulla Matrim.) It is unjust that she should now suffer the consequences of her imprudence. Nor is it valid that Joanna requested and obtained an apostolic dispensation to enter into marriage. On the contrary, the dispensation granted to Joanna to contract the marriage should make the new dispensation even more difficult to obtain, since it is improper that what was established by a legal act should now be destroyed by another legal act. It is also alleged as a reason for doubt, at least, the impotence of the man. But since nothing has been judicially presented to prove the man's impotence, everyone sees that there is doubt in this matter.

[*Latin ed. p. 367*]

VIENNA: It is to be considered with regard to the power of a man; and furthermore, when it is a question of the sanctity of the matrimonial bond, the safer party is to be chosen. The material damage inflicted upon the woman's property, and the fear that the woman, deprived of grace, might enter into civil marriage, are of no value; because a damage that is merely temporal has never been considered a sufficient reason for dissolving marriages, and because the denial of pontifical grace, with threats of scandal, is intended to move the mind of the Pontiff. With these and other considerations in mind, the purpose was to clarify the question of whether the Most Holy Father should be consulted regarding a dispensation from a marriage that is valid but not consummated, in a particular case.

RESOLUTION. The Sacred Congregation of the Council, having considered the matter, on August 9, 1884, decided to respond: Affirmative.

FROM WHICH THE FOLLOWING ARE GATHERED:

I. In a judicial process, two things must be formally proven in order to

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grant a dispensation: namely, that the marriage is valid but not consummated; and that just causes are present.

II. The sworn testimony of witnesses, as well as the testimony of experts, are of the greatest importance in proving the lack of consummation of the marriage.

III. Experts should be regarded more as judges than as witnesses, when it is necessary to prove a matter in which the judge is not instructed, nor can be instructed; and therefore, the judge renders his judgment according to their testimony.

IV. Since in judgments concerning very serious matters, it has been the accepted practice for judges to render their judgment in a larger number; the same rule seems to be to be followed regarding expert witnesses, who, in their own field of expertise, are to be considered as judges.

V. In the matter under consideration, a larger number of expert witnesses voted in favor of the woman's integrity; therefore, the lack of consummation of the marriage can be said to be proven by the testimony of the plaintiff, the witnesses, and the judgment of the experts: and just causes do not seem to be lacking for granting a dispensation.

[*Latin ed. p. 368*]

368. URGENT SUSPENSION. On August 9, 1884, the parish priest of a church in the diocese of Ugentina, having received in November of the year 1883, at the urging of certain individuals, a process initiated against him in the episcopal curia, and being informed that a sentence would soon be issued, sent letters to the Bishop through a messenger on the 29th of the aforementioned month, in which he implored the Bishop to indeed institute the process, but to observe the norms of law, so that he might not lack the means to defend himself. However, the Archbishop, disregarding the pleas of the Archpriest, issued a decree on December 1st, by which he suspended the aforementioned priest from divine and parochial office for reasons known to himself, and informed by a clear conscience. Struck by the severity of this decree, the parish priest appealed to the Most Holy Father, imploring that the reasons which had moved the Bishop to inflict such a severe penalty be made known to him, and that the Holy Congregation should decide not only on the validity of the decree, but also, in the event that it was deemed invalid, on the restitution of the damages which he had suffered, and this appeal continues to this day. When asked for information and a vote, and in order to learn the reasons for the imposed suspension, the Bishop replied: During the time that the appellant administered the parish entrusted to him, the conduct of his life was a great scandal to the faithful. Neither warnings nor entreaties were able to persuade him to abandon his wicked ways. In order that the reasons for which the suspension from divine office was inflicted upon him may be known to the Holy Congregation, I am sending a summary of the process initiated against

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him, concerning public scandals committed by him recently. In such a summary, the obscene acts are listed individually, involving a certain young woman. Among the witnesses, first of all, are four individuals, and three other priests of the aforementioned town, who...

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 369*]

UGENTINA 369: By oath, they assert that the Parish Priest conducts himself improperly with various women, and especially with Mary; and they added that they are refraining from reporting further details concerning the Parish Priest's immoral life, because these matters are entirely known to the Curia. Even Mary testified under oath that she was led by the Parish Priest into a life of prostitution, and that she had committed carnal sins with him many times. These and other things were confirmed by other witnesses. With these facts before him, the Bishop was again written to, and it was stated that the suspension, imposed with informed conscience from divine and official duties, did not appear to be in accordance with the form of the Council of Trent, Session 14, chapter 1, concerning Reform, and therefore could not easily be upheld. However, the proceedings concerning the morals and scandals of the same Parish Priest should proceed according to law.

A SYNOPTIC DISCUSSION: THE DECREE SEEMS TO BE SUSTAINABLE. Several arguments suggest that the decree of suspension, issued by the Bishop with informed conscience, should remain in force, whether considered from an external or internal perspective. Indeed, the Fathers of Trent, in Session 14, chapter 1, on Reform, seem to grant the Bishops the broadest power to suspend clerics, both those who have already received orders, and those from ecclesiastical grades and offices, for any reason, even extrajudicially. Certainly, the word "extrajudicially" excludes any necessity of a judicial form. Therefore, in a suspension issued with informed conscience, it is commonly held that the Bishop may not only dispense with warnings, as Barbosa states in chapter Romana de sent. excomm. in 6, number 5 and following, and as Van-Espen states in volume 10, Tract, de recursu, chapter 4, § 4, and as Schmalzgrueber states in part 4, title 39, number 30, and as Reifenstuel states in the same title, number 28, and as Monacelli states in formul, legal, part 3, title 2, form 8, number 21, and as Pignatelli states in volume 10, consult. 10, article 3; but also that he is not required to reveal the cause of the suspension, or the offense itself, to the accused, but only to the Apostolic See, if the suspended party has recourse to it, as taught by the Sacred Congregation in Vercelli on March 21, 1643,

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as reported by Benedict XI in De Syn. Afta, volume XVII, page OC. 24.

[*Latin ed. p. 370*]

370 UGENTINA, Diocese, Book 12, Chapter 8, Number 4. Therefore, if the Bishop, with informed conscience, imposes a suspension due to a defect in the canonical form, the decree appears to be entirely invalid. However, although the Bishop might have been able to omit any admonitions, he did not neglect, at the appropriate time, to fulfill the office of a most beloved father towards the parish priest, exhorting him repeatedly to conduct himself in a manner befitting his dignity; but considering that the duties of kindness are ineffective when met with ingratitude, and that the son gains nothing, indeed is rather despised, he deemed it better to resort to the remedies of justice. Furthermore, nothing detracts from the value of the decree, since the crimes imputed to the parish priest are notorious and public, and therefore should be investigated by the judicial order, and certainly not restrained by extraordinary remedies. For, in the first place, not all authors agree on which offenses should be considered hidden and which should be considered public; secondly, it seems impossible that all offenses committed by the parish priest would be so widely known that not even one would remain hidden. However, even if only one crime remained hidden, it would be sufficient to impose a suspension, either as a punishment or as a censure, based on informed conscience. In addition, Pignatelli, Volume 9, Opinion 8, Number 5, states: "Although the censure imposed for multiple offenses is not sustained for each of them individually, it is sufficient that it be proven based on only one of them, since each one is sufficient to incur the censure." Moreover, that clause – "for any reason" – is universal, encompassing not only hidden, but also public offenses; Barbosa, in the Dictionary, frequently uses the word "quicumque," which means "anyone," including all things and excluding nothing. And the Sacred Congregation of the Holy Office, in the decree concerning Suspension and Appeal, dated April 8, 1848, after citing numerous authorities, ruled that even public offenses are not excluded from the provisions of the aforementioned chapter. Indeed, by arguing from the greater to the lesser, if this provision includes a hidden offense, which certainly could not be punished with a fine before the Council of Trent, then it must certainly include a public offense.

[*Latin ed. p. 371*]

UGENTINA 371, from its very notoriety, cannot be denied for any reason, and therefore admits of no defense. Therefore, the same Sacred Congregation, in the case of the Removal of the Vicar in Perugia on September 26, 1795, in Leopoli concerning the Suspension on February 27, 1875, and in several other cases, responded that suspension should be maintained based on informed conscience, even after an examination of the witnesses regarding the crimes, which demonstrated that the crimes were more or

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less notorious. However, the right of each individual to defend oneself, which is derived from natural law itself, is not thereby hindered. Since this right is not denied, but rather, in order to appease the anger of the people who have been scandalized by the Parish Priest, and to prevent the matter from becoming more widely known, it was absolutely necessary that the Parish Priest immediately abstain from the exercise of his spiritual ministry; for any delay in the punishment would have been considered a tacit approval by the Prelate. The Parish Priest, however, does not have his avenue of defense closed, since recourse to the Apostolic See is open to him, to whom the Bishop must render an account, and who must be impartial with regard to the accused, provided that equity and justice are observed. It must be understood that such actions pertain to the political and correctional jurisdiction, the exercise of which is entrusted to the Bishop's discretion and prudence, as Barbosa states in chapter 1 on Office, and Gonzalez in chapter 28 on Office, numbers 2 and 8, and Berard in part 2, dissertation 3, chapter 5 on suspensions and censures. This same principle, it seems, should be maintained if the decree is interpreted intrinsically. Indeed, it is established by law that clerics who lead a scandalous life and live scandalously, if they do not reform after being warned, should be restrained by spiritual penalties. Council of Trent, session 21, chapter 6 on Reform, to which all canonists fully agree. There is no doubt about the conclusive nature of the proof of crimes. For the rule of law teaches us in every case that legitimate proof is required.

[*Latin ed. p. 372*]

372 For the purpose of establishing faith, it is sufficient to have two witnesses of proven reputation, unless the law expressly requires more in a particular case (L. Ubi numerus ff. De test., et attesi. Can. Si teste §. Ubi numerus quaest. 3 Cap. Licet universis 13 de test., et attest. Reiffenst. lib. 2 tit. 20 eod. tit. §. 8 n. 331). In this case, not only two witnesses, but eleven were heard, who, after being sworn under oath, testified regarding the shameful and scandalous conduct of the parish priest, both with one woman and with another, and especially with Mary. Although, perhaps, an exception might be raised against the testimony of some, there is the unanimous testimony of seven priests, which cannot be refuted in any way. These, without a doubt, seem sufficient to form the conclusive proof of the crime. Hence, the objection raised by the Advocate completely vanishes, in which he sought to suggest that the witnesses, driven by implacable animosity towards his client, had given such infamous testimony. For, setting aside the other witnesses, it is by no means permissible to suspect that the aforementioned seven priests were so forgetful of their own salvation that, not deterred by the divine judgment, they would be willing to commit perjury and inflict the greatest harm on an innocent person. Therefore, since the facts are as they are, it seems that the Bishop acted wisely in applying such

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a remedy to avoid more serious scandals. Furthermore, it is entirely superfluous to raise the question of the restitution of damages and expenses, given the validity of the decree of suspension. Indeed, it is well established in both laws that he who, through his own fault, has caused damage and expenses, must bear them. Since, from what has been discussed so far, it appears that the decree of suspension is valid, it necessarily follows that the parish priest's petition regarding the restitution of expenses must be completely rejected. IT SEEMS THAT THE DECREE CANNOT BE SUSTAINED. The Defender of the Archpriest, addressing the controversy, attempted to demonstrate in several ways that the suspension, based on informed conscience, is by no means sustainable. He observed, first of all, that...

[*Latin ed. p. 373*]

UGENTINA 373: Whether it is permissible to apply extraordinary remedies, as established by the canons of the Council of Trent in Session 13, chapter 1, and Session 25, chapter 14, concerning the *Beatae Reformationis*, against those who have committed offenses, is a matter of some debate. It seems that resorting to such extraordinary measures should be avoided as much as possible, unless there are truly exceptional circumstances, otherwise one provision would contradict another, which is entirely to be avoided. Therefore, when Session 14, chapter 1, concerning the *Reformationis*, establishes a remedy that is entirely extraordinary, it is necessary that three things, above all, concur, namely, that the offense is hidden, that the judge has certainty about the offense, and finally, that there is impossibility, or at least great difficulty, in conducting a trial according to the established legal procedures. Indeed, it is only for offenses of this nature that such a suspension can be imposed, as is deduced not only from the words of the Council of Trent itself, but also from the authentic interpretation given by the Sacred Congregation of the Council in the *Alerte* of November 28, 1657, book 21, decree, page 134. This is also confirmed by Book 7 of the Decretals, page 89, where the following decision is recorded: "The Congregation of the Council judged that chapter 1 of Session 14 concerning the *Reformationis* applies to suspensions and prohibitions, both temporary and perpetual, and that a temporary prohibition is that in which the Bishop, at his discretion, proceeds extrajudicially, prohibiting or suspending." Furthermore, almost all Doctors adhere to this opinion; Barbosa in *Ius Can.*, book 1, chapter "Ad aures," number 4; Pirhing in *Ius Can.*, volume 1, treatise 11, section 1, number 15; Pignat., volume 1, Consultation 261, number 1; Monacell., *Formulæ Leges*, volume 1, article 13, form 3, number 29. Among more recent authors, it is sufficient to cite Liguori in *De Visit. Sacrorum Liminum*, part 1, section 8, number 273, who says: "However, the Bishop must take care not to, with a false understanding, consider something that is already public and notorious as if it were hidden, and

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therefore, with informed conscience, to impose a suspension; such a decree would not be sustainable." Finally, from the constant practice of the Sacred Congregation of the Council, it is clear that when there is impossibility of instituting a trial according to the established legal procedures...

[*Latin ed. p. 374*]

374. UGENTINA was present, and always insisted that the suspension be carried out, weakening the validity of a suspension based on informed conscience, as is evident from several resolutions, among which it is sufficient to mention those of Boiano. The suspensions of March 9th and June 27th, 1774; the suspension of Saint Agaiae of the Goths, of February 26th, 1853; and the most recent ones, of Bosnia and Sirmia, December 20th, 1873. And he commanded that the Bishops of the Sacred Congregation of the Eastern Churches and the Regular Canons adhere to this latest resolution, in the Instruction which he gave them on June 11th, 1880, regarding the procedures to be followed, especially in these times when it is necessary to omit certain formalities. In article 9, it declares that the remedy of an extrajudicial suspension based on informed conscience remains in force, according to the interpretation given in Bosnia and Sirmia, December 20th, 1873. (1)

With these premises, the Advocate states that not one of the three conditions required for a suspension imposed by the Ordinary is verified. Indeed, the crime for which the Archpriest was accused is not hidden, but public and notorious to all, as is demonstrated by the testimony of the accusers. Therefore, since it is established by the testimony of the accusers that the crime was public, it necessarily follows that the Bishop could not have proceeded with a suspension based on informed conscience, and therefore that such a suspension lacks any validity. Furthermore, it is not objected that, apart from the public crimes, there exists some other hidden crime. For the Bishop, requested by the Sacred Congregation to report on the causes of the imposed suspension, presented nothing other than what is contained in the clandestine accusation. But if some hidden crime had been known to him, he would certainly have revealed it to the Sacred Congregation, which wrote to him that the reasons already presented were not sufficient. Furthermore, the second requirement is lacking, namely, the impossibility of instituting a canonical process against the Archpriest. But this, it seems, the Prelate himself has admitted, since he has not uttered a single word about it. Therefore, even from this point (1) This Instruction is found in Volume VII, page 569, and in Volume XIII, page 324. The question of Bosnia and...

[*Latin ed. p. 375*]

The decree of suspension would have to be overturned, as declared in the resolutions of the Sacred Congregation. Regarding the third requirement,

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namely the certainty of the crime, the Defender of the Faith, after examining the charges, stated that the Bishop had not concealed anything, and that the accusers were pursuing the Archpriest out of hatred, because he had refused to cede a portion of the benefice to them. This, at the very least, should have aroused suspicion, but rather, driven by malice rather than a love of truth, the accusers had testified against the Archpriest, especially since they had given their testimony with one voice and at the same moment. Any reasonable person would immediately have understood that they had conspired against the Archpriest beforehand. Furthermore, witnesses, especially in criminal cases, are to be rejected entirely if, even for the smallest reason, they are excluded from giving testimony, as stated in Constant. V ot. Dec. tom. 1 vel. 61 n. 18. Moreover, the accusation, as it appears in the records, is so far from the truth that it is immediately apparent that it is a mere calumny and falsehood. And indeed, whatever the witnesses claim, they say they heard it from a certain woman, and therefore all their testimonies rely on a single witness; but, according to a well-known saying, one witness is no witness. Moreover, it is clear that the woman, Mary, is considered by all to be a harlot and of depraved morals, and therefore she is not exempt from any exception. Finally, it is evident to everyone that a woman who reveals her own wickedness does not deserve to be believed, as stated in the Rota in the Piacentina Separation of June 5, 1751, § 9, before Bussio, and in the Sacred Congregation in the Cracovian Parochial case of February 10, 1770. The same applies here, because the imposed suspension, since it has no fixed duration, is equivalent to a perpetual one, which is prohibited by informed conscience; and because the Bishop was not led by a love of justice, but rather to violate the Archpriest's penance in the parish. Finally, the Advocate stated that the Bishop should be held accountable for damages, according to Schmalzgrueber, lib. 5, part. 3, tit. 31, n. 1: for it is stated there that an unjust penalty is involved.

[*Latin ed. p. 376*]

376 A grievance having been presented; from this action arises a claim for the rectification of damages. This excess is to be attributed to the prelates, since the Bishop unjustly inflicted censures and other penalties upon his subjects. However, since the Bishop refused to comply with the mandate of the Sacred Congregation (1), while meanwhile lifting the suspension and instituting proceedings according to the laws, the Advocate concluded with the request that "the Bishop be punished with a suitable reprimand, so that, by this corrective punishment, the judges may learn how grave it is to pronounce judgment without due deliberation," as prescribed in Canon 6 of the Decretal concerning sentences. Furthermore, as the Sacred Congregation wrote on July 8, 1854, in Sessa Aurunca, in addition to the rectification of damages, it added: "It is to be requested of the Most Holy Fathers that they deign to admonish the Bishop concerning

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the more moderate use of his power." Therefore, having presented these matters, the following questions were to be clarified: I. Whether the decree of suspension, issued on December 1, 1883, based on informed conscience, is valid in this case. And, II. Whether there is a place for the rectification of damages in this case.

RESOLUTION. The Sacred Congregation, having considered the matter, decided to respond on August 9, 1884. To I. Negatively, and furthermore. (2) To II. Negatively, and furthermore.

(1) The Sacred Congregation had previously debated before the question was presented to the full assembly, concerning whether the Bishop could avail himself of the remedy prescribed by Session 14 of the Council of Trent, in order to proceed according to the established procedure concerning scandals and the conduct of parish priests; the relevant passages are cited on page 314 of the aforementioned volume. For from what has been presented, it is clear that the suspension was not imposed in accordance with the form prescribed by Session 14, chapter 1, concerning appeals.

(2) In Volume XIV, page 299, Appendix III, we have indicated our understanding of the interpretation of the Sacred Congregation concerning informed conscience. Furthermore, the resolutions given in the present case are recalled, and they strengthen and allow us to abstain from undertaking other actions that could not differ from them.

[*Latin ed. p. 377*]

377 QUESTIONS concerning parish priests to whom several parishes have been entrusted, etc. On February 3, 1884. When the Archbishop of Lanciano submitted to the Sacred Congregation of the Council a report on the status of his Diocese, he also proposed the following questions to be resolved: I. Whether a parish priest, governing two or more parishes, is obligated, either personally or through others, to celebrate two or more Masses for the people on weekdays and on feast days? II. And, to the extent that he is obligated, can the faculty of repeating the Masses be granted to him, according to the provisions of the Constitution *Declarasti Nobis* of Benedict XIV? III. Can the income of a certain canonry, with its rights of patronage, ecclesiastical and familial, which amounts to sixty-eight florins annually, be considered a sufficient title for receiving the sacred and major orders? IV. If it is not sufficient, can it be increased with goods or otherwise, and to what extent? The Sacred Congregation of the Council responded to these questions on the aforementioned day: To I. A parish priest, as the case may be, is obligated, either personally or through another, to celebrate as many Masses as he governs parishes. To II. There is no place for the faculty of repeating Masses, unless there is a lack of clergy, and another priest is not present who can celebrate and offer the Mass in place of the parish priest. To III. Negatively. To IV. Affirmatively, up to the amount of the synodal

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tax.

[*Latin ed. p. 378*]

378 CONCERNING THE ORIGIN OF THE CHILD. On August 9th, 1884. Philip Meucci, of civil condition from the Diocese of Tiburtina, went to Verula while still young, and there he taught the humanities for several years in the Seminary. Meanwhile, his love for a girl of humble condition, named Emilia Passeri, grew, and he desired to take her as his wife. In order to bring about this union more easily, and to remove every obstacle and difficulty, perhaps arising from the disagreement of the parents and the disparity of condition, Philip fled from Verula to Rome with Emilia, and after a few days, he celebrated the desired marriage in the parish church of St. Mary in Via, as can be seen from the marriage book, on September 24th, 1828. Having thus fulfilled his vow and dedicated himself to the service of the Pontifical Government, as is said, Philip remained in Rome with his wife until the year 1831. At that time, Emilia returned alone to Verula; the husband, however, having been deprived of his office, it is said, while studying with rebellious factions, had stayed here and there. This separation continuing, and precisely beginning in the month of February of the year 1837, Emilia, residing in Verula, gave birth to a child, which she had baptized, concealing the name of the father, in the manner of illegitimate children. Then, the aforementioned child was exposed in the Archhospital of St. Spirit in Saxia, in the City of Rome, and afterwards, under the name of Caelestis Proietti, she was entrusted to be raised, and she resided in the place of Civitella until the time when she married Caietano Palombi, who had resided in the City for many years. On the occasion of this marriage, the girl Proietti, having learned the name of her mother, sought her out, and after a diligent search, she found her. From this, as the aforementioned Proietti asserts, she also learned of the true father, who, after the overthrow of the Roman Republic, in the year 1849, SUMMARY OF THE FACTS.

[*Latin ed. p. 379*]

VERÜLANA, having migrated from the pontifical territory, died on July 24, 1865, in Pisa, where she had been teaching humanities at the University for several years. Furthermore, the aforementioned Proietti presented in the records of the case a portrait of her presumed father, which had been sent to her by her mother, who also died in the year 1877, along with a letter dated April 29, 1865, in which the mother assured her daughter that the father had inquired about her through a friend, and whether she had received any education. However, the parents were never concerned about removing the notation of uncertain paternity, nor was the woman Proietti troubled by it until the year 1881. As the census was approaching in Rome, she assumed the name Constantia Meucci. However, the civil status official refused to accept the census form bearing the surname Meucci, unless

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the aforementioned notation of uncertain paternity was corrected by ecclesiastical authority; she first went to the Vicariate of the City, and then requested the Bishop of Verulana to declare her the legitimate daughter of the aforementioned Philip Meucci. And when such requests were not granted, the entire matter was presented to the Most Holy Prince by the Bishop of Verulana himself, who, after explaining the reasons of the petitioner, added: that he had summoned the canon who had baptized the petitioner, in order to ascertain the matter concerning the notation of illegitimacy placed in the baptismal register. That canon, in turn, responded that he had acted in that manner because neither the midwife, nor the mother, had designated anyone as the legitimate father, and the infant, as if illegitimate, had been presented at the baptismal font. Therefore, the aforementioned Bishop was instructed by the Sacred Congregation of the Council to more carefully inquire, through examination of witnesses and relatives, about the causes of the reported uncertain paternity, and about the relationships that existed between the petitioner's parents, especially at the time of her conception. The Bishop spared no effort to shed light on this matter; but he was only able to gather from the petitioner's uncle that, during the separation, Philip had never visited Verulana, nor had he met with his wife in any way. Moreover, he added that after the uprisings of the year 1831, he had always remained outside the pontifical territory.

[*Latin ed. p. 380*]

380 VERULANA was born; which, however, according to others is not true, at least if it is a matter of a delay that was never interrupted. Therefore, the aforementioned Oratrix's paternal grandfather considered her to be illegitimate, because she was brought for baptism as if she were illegitimate. However, he argued, there is nothing to prevent the Oratrix from being declared legitimate by the S. O. C.; since no injustice or harm can arise from this legitimization, because no one else exists, except the paternal grandfather, who can agree or disagree.

A SYNOPTIC DISCUSSION ON WHAT IS OPPOSED TO LEGITIMIZATION. It is known to no one that the parish registers, which attest to matters pertaining to the office of the parish priest, provide full faith and complete proof, just as instruments written by a public notary with the proper legal formalities, provided that nothing else contradicts it. Thus, Pax Jordanus, vol. 3, title on the Faith of Instruments, no. 48, citing the Rotam Decis. 321, no. 3, part 1, where it is resolved that the death of someone can be sufficiently proven from the parish register, in which the deceased are recorded. The same must be said of other matters that are recorded in the aforementioned registers by virtue of office, as taught by Maschardus on Proof, conclusion 673, no. 1 and following, citing several others. And rightly so, for it is held by the learned doctors that, by the authority of the Council of Trent, session 24, chapters 1 and 2, the parish priest's *industria*

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and *fides* are to be relied upon in writing in such registers.

Furthermore, since the fact consists of the baptismal register testifying to the uncertain paternity of the Oratrix, it seems that this testimony should be upheld, as long as the contrary is not proven. And this seems to be even more necessary because the aforementioned baptismal register clearly indicates the Oratrix's mother. For since she was joined in marriage, it is to be presumed that the parish priest was more cautious in describing the uncertain paternity, so that the honor and education of the child would not be brought into disrepute by the injustice of the parents. And it does not seem likely that the parish priest was deceived; for since the mother was indicated, the declaration of uncertain paternity would have been of no use, due to the contrary legal provision.

[*Latin ed. p. 381*]

CHAPTER 38: presumption. Furthermore, since Verula is a small town, the deception would have been easily detected. These indications are present, and the greatest strength is added by the testimony of the witness, the aunt. Indeed, it must be noted that, after a relatively long period of time, during which the aunt has always been considered to be using false pretenses, it is also to be observed that the aunt herself does not deny that her mother, Emilia, had already visited Verula from the year 1831 or shortly thereafter, and had resided there without a husband. And although she then asserts that Philip Meucci remained with Emilia in Rome, and therefore could occasionally meet with his wife, the aunt does not dare to assert that Philip and Emilia actually ever met. However, this must be entirely demonstrated: for once Philip's absence is admitted, his access to Emilia must be proven, not presumed. Moreover, the aunt's witness seems to block any path to presumption, who, under oath, testified that her sister, Emilia, having been abandoned by Philip, returned to Verula, and no longer met with him. This testimony is to be held in high regard, since it appears to have been given by one who, having been thoroughly informed about all aspects of the matter, has presented everything frankly in obedience only to the truth. And although the Bishop reports that others contradict the aunt's assertion that Philip has lived outside the pontifical jurisdiction since the rebellious events of 1831, this testimony nevertheless retains its full strength, since no one asserts that Philip and Emilia ever saw each other after the year 1831. Furthermore, Emilia's letter, in which Philip is mentioned as the aunt's father and is said to be concerned for her, does not seem to present any difficulty. For the aforementioned letter offers no authentic testimony of its authenticity, and furthermore, Philip's supposed concern for the aunt appears implausible, since he seems to have been so forgetful of his wife and family that no one in Pisa knew of his

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condition or origin, and thus in the authentic testimony of his own death.

[*Latin ed. p. 382*]

382. VERULANA. Hoc potuit appellari "coelebs communitatis Pisarum." Sed ratio paternitatis hic probanda videtur ex hoc, quod mater noluit de macula adulterii apparere coram "filia sua." Praeterea, videtur non prodesse praesumptio iuris, quae dicit patrem esse eum, quem iustae nuptiae demonstrant. Hoc quidem praesumptionem Ulpianus expressim cohibet in L, 6 ff., De his qui sui vel alieni iuris sunt, ubi Iurisconsultus, postquam filium definivit haec verba: "Filium eum definimus, qui ex viro et uxore eius nascitur," casum nostrum ita fingit: "Sed si fingamus abfuisse maritum, verbi gratia, per decennium, reversum annulum invenisse in domo sua, placet nobis sententia Iuliani, hunc non esse mariti filium." Non tamen ferendum, ait Iulianus, eum, qui cum uxore sua assidue moratus nolit filium agnoscere, quasi non suum. Sed mihi videtur, quod et Scaevola probat, si constet maritum aliquandiu cum uxore non concubuisse, infirmitate interveniente, vel alia causa, vel si (alii legunt "veluti si") ea valetudine paterfamilias fuerit, tit generare non posset, hunc, qui in domo natus est, licet vicinis scientibus, filium non esse. Et sapienter profecto id traditum est, cum omnis sive hominis sive iuris praesumptio, quantumvis violentia physicae ac necessariae, cedere debeat veritati. Videtur propterea paternitatem in themate demonstrari haud posse ex nuptiis.

E A QUAE LEGITIMATIONI FAVENT. E X altera vero parte, perpendendum occurrit talem vim inesse praesumptioni, quae patrem ex nuptiis demonstrat, ut ab ea nullatenus recedi queat, nisi concludentissimis argumentis contrarium in facto probetur, et quidem taxative ex viri absentia vel physica impotentia. Cum enim impossibile "est, ut quis certum valeat suum ferre parentem ob veram et absolutam paternitatis probationem, negatam a natura, quae sua inter arcana mirabile posuit humanae generationis momentum; idcirco ad civilem constituendum liberorum statum, et innumeras ac inextricabiles arcendas de paternitate controversias, oportuit ex necessaria familiarum tranquillitate, ut lex semper ma-

[*Latin ed. p. 383*]

In order to resolve a delicate matter and to establish proof of paternity, which nature concealed in its obscurity, the most prudent lawyer Paulus, after having spoken of the mother, who is always certain, even if she conceived in a common manner, and adhering to the presumption of the law regarding the father, immediately stated: "The true father is he whom marriage demonstrates, as is read in L. 5 ff. de in ius vocando." This very presumption of the law, derived from marriage, was held by the same lawyer in L. 12 ff. de Statu hominum, where he said: "It must be believed" that the son born from just marriage in the seventh month "is a just son." Further-

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more, the same thing was stated by the lawyer Celso in L. 19 ff. de Statu hominum in these words: "When legitimate marriages have been made, the father of the child follows; the mother, generally, follows, or as those who cannot demonstrate the father, as Modestinus says in L. 23 ff. de Statu hominum." And to this very opinion agree also the Emperors, who in L. 14 Cod. de Probat, decreed thus: "Children conceived in marriage are, by civil law, constituted as the father's." And indeed, these laws seem most prudent, since they require the sanctity of marriage, the good of society, and the tranquility of families, which, without the presumption of legitimate filiation, would be lamentably disturbed. Regarding this matter, from the most remote antiquity, the legal principle has prevailed among almost all nations, by virtue of which the son born of a wife must be considered the son of the husband, and that he himself is required to prove nothing else to demonstrate his legitimate birth, than that he was born of a just marriage. For, as the wise Cuiacius prudently observes in lib. 2 tit. 4 ad L. 4 §. 1 Praetor says ff. de in ius vocando: "Outside of marriage, the father is uncertain; among the female sex, we know the mother, we believe in the father, because births are certain witnesses, and those conceived are no judges; finally, the only demonstration and proof of the natural father is that which is taken from marriage." Moreover, it is undoubtedly the case, as the facts clearly show, that the woman was born of a constant and legitimate marriage. Therefore, the burden...

[*Latin ed. p. 384*]

384. The burden of proving the legitimacy of the child does not fall upon the accuser, but upon one who denies the legitimate filiation. However, the necessity of such proof in this case seems to be questionable, or, at the very least, such proof does not appear to be one that can effectively oppose the alleged principles of law. Firstly, the accuser states that the testimony of the uncle should be given little or no weight; because at the time when the mother returned to her father's house, the uncle was absent, being devoted to military service under the Pope; and after his return to the country, he may have heard false things concerning the morals of his sister, who was living far from her husband, and who was forced to conceal her pregnancy. For her husband demanded that the newborn be taken to the *brephotrophium* before baptism; with the intention that it should not be known to anyone that his own daughter had been presented at the pious place. And he himself celebrated the marriage in Rome, so that it might be concealed in his own country; and for this purpose, he arranged to be registered as a professor in Pisa. But despite this, he sent money to his wife, and he longed to be certain about the child, weeping when he learned from a friend that the child was not of noble birth. Furthermore, the testimony of the uncle does not seem to be free from other errors. He himself states that Philip has lived outside the jurisdiction of the Pope since

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the rebellious events of the year 1831; which is not certain and is denied by others, as reported by the Bishop. He also stated to the accuser that the name Grace was given at baptism; which is contradicted by the baptismal register. And he recounted other things that are not in accordance with the truth. Moreover, it is not easy to establish with certainty that Philip Meucci was absent, since Emilia Veruli resided there, while Philip, according to the accuser's own statement, remained in the City, or more broadly, within the jurisdiction of the Pope, according to others. Although there are learned Doctors who, following the argument in L. 6 ff. concerning those who are of their own or another's right, teach that only the father has the right to allege the exception of absence or impotence; nevertheless, even setting this aside, the alleged absence does not seem to be able to be considered as perpetual and continuous, or, if not as such, that it has not been proven to be so. Furthermore, the accuser adds that the cause of the absence and the distance of the places are nothing extraordinary.

[*Latin ed. p. 385*]

In the case of Verulana 385, it must be considered whether this could have hindered the love and access of the married couple. For Philip Meucci, who was engaged in new studies and was removed from his civil government position in 1831, sent his wife, Verulana, and he himself remained in Rome, working as a language teacher, so that he could provide for his wife and send her some financial assistance. However, the absence of one spouse from the other should not be considered permanent, because the journey from Rome to Verulana is easy and short, and it would have been sufficient for the spouses to meet at least once. Furthermore, it seems entirely necessary to insist on this point; for among the presumptions, not only those that exclude a crime, such as those that are more honorable and more in accordance with rational nature, Sperellus Decis. 108 Fori Ecclesiae, no. 53, Farinaceus, book 3, *Praxis crim.*, question 85, no. 19, Mascardus, *Conciones*, 1231, no. 30 and following, but also those that are more benign and more favorable to the spouse or offspring, chapter *Estote de reg.*, Sperellus Decis. 174, no. 7, Maschardus, *loc. cit.*, no. 27, should be considered. All the more so, since the adultery of the woman is not at all proven, as it is asserted by one of the lawyers' uncles, whose testimony is not otherwise without errors. Indeed, the lawyer further adds that her mother claimed to have committed adultery and conceived from this. It would not be understood how the husband could have borne this most serious injury with equanimity, an injury whose proof was provided by the woman herself, by claiming to be the lawyer's mother; nor would it be understood how the husband would have inquired about the lawyer, as if she were his daughter, and sent her a portrait, as is said to have been taken from the wife's letter. Finally, no difficulty seems to arise from the allegation of uncertain paternity, nor from the relatively long passage of

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time during which the lawyer was considered illegitimate. For the law intends to protect, above all, those children who are already considered legitimate by the judgment of their parents, rather than those who lack the very possession of paternity, because in L. 5 "ff." concerning the calling of a person to justice, the father is not he who has possession or recognition, but he whom the marriage demonstrates. Although the son is not in the possession of legitimacy, yet if he proves the marriage of his parents and his own birth, there is nothing to doubt, as in *Acta*, volume XVII, page 25.

[*Latin ed. p. 386*]

386. Having acquired the legal right, which is preferable to any other claim or possession, Sperellus Decis, in paragraph 174, number 7, states that legitimate filiation, if it can be legally claimed in court, is legitimate. Since filiation is a matter of inestimable importance, like liberty, it is exempt from human commerce and can never be subject to prescription. Law 3 of the Code concerning long periods of prescription confirms this. Therefore, since illegitimate filiation has not been proven with conclusive arguments, it appears certain that the legitimacy of the child is established, and the petitioner is confident that a favorable judgment will declare this. Indeed, it is certain that a judgment can be rendered in accordance with the presumption of the law, unless it is contradicted by contrary evidence. Thus, Menochius, in *De Praesumptionibus*, book 1, question 94, numbers 1 and 2, asserts that this is certain and clear. This is evident from chapters "Nullus" and "Quosdam" and following, concerning presumptions. "For that which is established by the presumption of the law is said to be sufficiently evident," says the Abbot in chapter "Ad nostram," number 6, concerning purchase and sale, citing Law "Licet Imperator" from the *Fragmenta de Legatis*, 1, where the presumption of the law is considered as truth and the clearest proof. Having considered these points on both sides, the following question must be addressed: Whether it is established that the petitioner's filiation is legitimate in this case.

RESOLUTION. The Sacred Congregation, having considered the matter on August 9, 1884, decided to respond: "Affirmatively."

FROM WHICH THE FOLLOWING IS DEDUCED:

I. Since a wondrous aspect of generation is hidden among the mysteries of nature, it is impossible for any child to definitively and absolutely prove their parentage through true and absolute proof of paternity.

II. The law supplements the proof of paternity, which nature has concealed, in order to establish the legal status of children and to resolve the countless controversies concerning paternity, through the presumption of the law; because this is what the tranquility of families, the sanctity of

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marriage, and the good of society require.

[*Latin ed. p. 387*]

VER.ULANA 387 III. Consequently, since legitimate filiation cannot be directly proven, the law has recourse to indirect demonstration and proof, deriving them from marriage, establishing the principle of law, sanctioned in almost all nations, that the father is he whom marriage demonstrates; it must be believed that he who is born of just marriage in the seventh month is a just son. IV. Therefore, it suffices, in order to demonstrate one's own birth, for a son, concerning whose legitimacy doubt has arisen, to prove that he was born of a just marriage. V. When adultery is not clearly proven, among the presumptions, that one which excludes the crime should be preferred, and that which appears more honorable, more in accordance with rational nature, more benign, and more favorable to the offspring. VI. In this matter, there is no room for doubt: the woman was born of a constant and legitimate marriage; and therefore, by the presumption of law, there can be no doubt concerning her legitimacy; and this all the more, because contrary proof is of such a nature that it cannot effectively be opposed to the principles of law alleged.

= = = = = z @ g S 8 ^ c = = = = = — EX 8, FROM THE CONGREGATION OF BISHOPS AND REGULAR CANONS OF MECHLIN, OR THE BROTHERS OF THE CELL. Dated 28 September 1883. SUMMARY OF FACTS. Historical documents prove that the Order of the Alexians, or Cellites, originated at the end of the thirteenth century. It consisted only of laymen, who professed three substantial vows common to regular Orders, and dedicated themselves to assisting and caring for the sick, those suffering from contagious diseases. Several Popes commended the institution of the Cellites, among whom were Gregory XI, Boniface IX, Eugene IV, Nicholas V, and Pius II; and Sixtus IV also confirmed it, provided that it adhered to the rule of St. Augustine.

[*Latin ed. p. 388*]

388. MECHLINIEN. [Referring to a religious order]. It followed the rule. In the year 1506, it obtained the approval of Pope Julius II. Clement XI approved the constitutions of the institute, and finally, in the year 1772, Clement XIV, adhering to the actions of his predecessors, in a brief beginning with the words "Exponi nobis," declared: that those who had taken vows and made profession according to the constitutions of the Order were truly religious. However, after the French Revolution, which began in the late 18th century, the affairs of such institutes had undergone significant changes among the Belgians; the Sacred Congregation of the Inquisition, in the year 1869, for reasons which are not clear, inquired of the Sacred Congregation of Bishops and Regulars what it thought about the vows of the Cellarites. This Sacred Congregation, having requested the opinion of

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the Archbishop of Mechlin, received the following from him: that the vows of the Alexians, or Cellarites, should be considered simple, not solemn. Nevertheless, the Sacred Congregation of Bishops and Regulars, wishing to proceed with caution and deliberation in such a weighty matter, sought the opinions of both Most Reverend Consultors. After receiving these opinions, and after the case was presented at a plenary meeting on September 26, 1873, the following decree was issued: "Let the opinion of the other Consultor be considered and examined." This arduous task was entrusted to Father Tarquinio, S.J., who was later co-opted into the College of Cardinals, but whose untimely death prevented him from completing it. He was succeeded by the Reverend Father N..., who undertook this task. On April 1, 1881, the case was again presented, along with the new opinion of the Reverend Consultor. But since the Eminent Fathers still saw the matter entangled in difficulties, they decreed: "Let it be postponed, and let the task be entrusted to the same Reverend Father N..., so that he may compile a history of the Cellarites from their origins to Clement XIV, and from Clement XIV to our own time, based on the documents." When the Reverend Consultor had performed this task excellently, the case was finally resolved, as will be explained below. A Synopsis of the Opinions of the Three Consultors: The opinions of the three Consultors are such that two were in favor of rejecting the solemnity of the vows, while the third maintained that they should be considered solemn.

[*Latin ed. p. 389*]

MECHLINIEN. 389 ARGUMENTS PRESENTED TO DETERMINE THE VALIDITY OF THE VOWS. In this matter, the following points were put forward, which we have already mentioned: namely, that the Order originated at the end of the thirteenth century, or at the beginning of the fourteenth; that it had been enriched with numerous privileges and graces by the Roman Pontiffs; that in the year 1458, Pope Pius II granted the *Cellites* the faculty of making solemn vows, although their institution did not yet constitute a true religious order. This was confirmed by Sixtus IV, who imposed upon the *Cellites* the obligation of observing the rule of St. Augustine. Then, Julius II adorned the institution with his approval, and gave to this religious order its name. In the year 1709, the Supreme Pontiff Clement XI approved the constitutions of the institution, and finally, in the year 1772, the bulls of the predecessors were solemnly confirmed by Clement XIV. However, the institution had at that time a Superior General, who was called the Visitor, and who was elected at the General Chapter, which was held at fixed times. It also had its own Provincials, who professed solemn vows, and were exempt from the jurisdiction of the Ordinary. Since all were and remained laymen who bore the name of the institution, it was customary to choose a religious priest from another approved Order to receive the professions of the *Cellites*. Furthermore, the institution

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had flourished until the recent century in France, Belgium, and Germany. At present, there are only eight *Cellite* convents in Belgium, and a few others in Germany. The Belgian convents are neither presided over by a Superior General, nor by a Provincial, for the last Provincial died in the year 1824. Therefore, their houses are not bound together by any bond, but are subject to the Ordinary of the place; and each of them receives novices, who are admitted to the habit and to professing the rule by the authority and presence of the Bishop. Given these circumstances, it is clear that there is no reason to dispute the validity of the vows. For if the *Cellites* were exempt, they would not, by any right, be admitted by the Bishops to make their profession; because if religion is exempt,

[*Latin ed. p. 390*]

390 MECHLIN. Regarding the jurisdiction of Bishops, it is evident that a Bishop cannot, by his authority alone, admit anyone to religious profession, because he does not possess the jurisdiction that is necessary for this act; Suarez, *De Relig.*, Vol. 7, Book 6, Chapter 11, number 3. According to information sent to the Sacred Congregation, there exist in the Diocese of Mechlin houses of religious of two types: some are located in the cities of Diest, Louvain, and Tirlemont, which have the old statutes and make their profession according to the ancient formula of the religious order; and these consider themselves exempt and choose a superior for life. Others exist in the cities of Malines, Lierre, and Antwerp, to which new statutes have been imposed by the Most Eminent Sterckx. These houses owe obedience to the Archbishop and choose a superior for a period of three or five years. But all, for the admission of novices, must offer prayers to the Archbishop and request his decree. The house of Looelles was founded by the Cardinal Archbishop in the year 1862 and is subject to the Ordinary. Regarding the house of Liege, it is testified that the Bishop declares that it depends solely on him in spiritual matters, and that he approves the election of the superior and receives their vows. In temporal matters, since the year 1797, it has been subject to a lay Commission under the title of the Commission of Hospitallers. The Superioress of the house of Liege states that, in the general expulsion of the past century, the religious were not expelled, but rather laid down their habit and name. However, in the year 1798, the Commission of Hospitallers seized possession of the houses and their property. And since the houses which they currently occupy they hold under a contract, which could be terminated and they could be dismissed; although they make a vow of poverty, nevertheless the religious retain the radical dominion, and preserve their civil rights. Therefore, the case of the religious of Liege is outside of the question; they are bound only by simple vows. The others, according to the instructions of Pius IX, after their novitiate, make simple vows for three years, and after three years, solemn vows. Are these truly solemn vows? asks the Consultor, and re-

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sponds:

[*Latin ed. p. 391*]

MECHLINIENSES. 3, 91, 1. For the sake of a religious profession, a mutual agreement and a complete transfer of oneself to the Religious Order are required, since a monk is obligated to show obedience to his Superior, and, conversely, the Religious Order is obligated to provide sustenance to the monk; Fagnan, in the chapter concerning rules, no. 19. Indeed, one cannot incur any obligation towards a religious order whose existence depends on the will of the municipalities.

2. It is required that the profession be made in an approved religious order, with a vow of obedience, according to the approved rule. As the aforementioned author Suarez, *De Peli*, book 6, chapter 2, no. 23, states: "It can happen that an offering and a vow are made in a religious order, which is indeed approved, but not as it is approved; that is, not according to that manner of living which is approved." And then, that manner of living or of uniting oneself to that religious order is not sufficient for a profession, any more than if that religious order were not approved. Therefore, if the manner of living and of uniting oneself to the religious order has been changed for the Mechlinian houses, it does not suffice to preserve the old formula for making a profession. However, it is said that only three Mechlinian houses still follow the old rules; the others have adopted new statutes drawn up by the Most Reverend Sterckx. But even these three do not preserve the essential elements of the old rules, such as the jurisdiction of the Visitor in the general chapter, the periodic convocation of general chapters, the division into provinces, the simultaneous election of local superiors, the office of Vice-Superior, which is no longer restored, the duties of the inferior officials, of which nothing remains, and other similar things. It cannot be objected that the three essential vows of the religious order are still observed by the Mechlinian houses, for neither the vow of obedience nor the vow of poverty are the same as those imposed by the old rule. Indeed, with regard to the vow of poverty, the Superior of the Lierre house declared that, although his confreres may intend to make a solemn profession of the vow of poverty, he has never considered them to be bound by that vow, since they have the right to possess a certain amount of property.

[*Latin ed. p. 392*]

392. MECHLINIENSIS. To these things must be added: that, although the vows of the Cellites were in conformity with the prescriptions of the sacred Canons, they would not suffice; for, as Cardinal Petavius states in his Commentary on the ninth Apostolic Constitution of Gregory IX, volume 2, number 9: "It cannot be established that a religious life, according to some manner of living, can exist solely with the substantial vows of the

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religious state, without the addition of certain observances, by which that state is defined for a particular religion or manner of living. For, just as substance cannot be or operate without accidents, so neither can the state of religion without a rule and manner of living and order: which indeed cannot be predetermined by the particular judgment of men." The manner of living of which the author speaks was designated by the Supreme Pontiff Sixtus IV and his successors. Now, since the Cellites have a manner of living that is entirely different from that which the Pope gave them, they do not fully fulfill the condition or manner established by the Pontiffs Julius II and Clement XIV, who decreed that those who, according to the constitutions of the Order (of the Cellites), made their vows and profession, were truly religious. To these things, it must be added that the acceptance of the vows is not canonically completed. Cardinal Petavius, in his Commentary on Constitution XL Bug. III, volume 1, number 79, states: "The Supreme Pontiffs Gregory IX, Eugene IV, etc., granted more privileges to the brothers and sisters of the Order of the Cellites, so-called in both Germany, exempting them from the jurisdiction of the Ordinaries, and also, among other things, granting them the faculty of choosing one of their own Order as a general visitor, who would fulfill the office of the Ordinary of the entire Order: receiving the professions of brothers and sisters, visiting their convents, and performing other duties which properly belong to the Head and the supreme Superior of the Order." And since these are laymen by their institution, it was necessary to consult, as the Supreme Pontiffs did in their Bulls, so that such a visitor could choose a priest who would perform the sacerdotal functions in his duties, which are sometimes necessary, especially in the pro-

[*Latin ed. p. 393*]

MECHLINIEN. 393 concerning the reception of religious vows. A priest must be chosen by some order approved by the Holy See, who, together with the Visitor, will fulfill all duties, as a layman, which are incompatible. However, neither a Visitor nor a priest elected by him can receive solemn vows. One Ordinary must perform all these functions, to whose jurisdiction the Cellerites are immediately subject. It should also be noted that, according to the records of the Mechlinian Curia, there are several marriage dispensations granted to Cellerites, in one of which a clause states that the marriage must be celebrated secretly, without any mention of vows. Neither the prescription of 70 years nor the presence of Cellerites who had previously made professions in the past century can be objected to, because there is a great difference between them and the subsequent professions made in this century, since they are important for the restoration of the Order, which is subsequently demonstrated. Furthermore, it is noted that in Germania, the Cellerites initially make simple vows for five years, which are then renewed and become perpetual.

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ARGUMENTS REGARDING THE SOLENNITY OF VOWS. The most Reverend Consultor, to whom both vows were entrusted, as we have narrated, namely one on September 26, 1873, and the other on April 1, 1881; and finally, in order to compile the most accurate possible history of the Order of the Alexians from pontifical documents, he noted above all: that this matter concerns the status of the Order of Cellerites, which is undoubtedly recognized by the Church as being in a state of perfection. But questions of status are the most important: just as if the origin, freedom, citizenship, or even life of a private individual were put at risk. In such matters, one must proceed with the utmost caution: for no one should be deprived of their head or their own status without certain knowledge of the facts. General principles of law which favor freedom and legitimacy must be observed all the more strongly in the case of a religious Order, whose perfect consecration to God is a mark of nobility: which is confirmed by so many pontifical constitutions.

[*Latin ed. p. 394*]

394. MECHLINIEN. This institution is adorned with privileges, and it merits countless favors and performs works that are even now beneficial for the salvation of souls. It must also be borne in mind that the poor and uneducated, who are assigned to the Order of the Celites, are to be excused for their lack of understanding and ignorance, if at any time the authority of the Bishops should lead them into error concerning matters pertaining to their own status. Therefore, the general principles of law must be applied to their case: the rustic, the minor, and the woman, when it comes to avoiding harm, must be assisted. *Leg. 1 Cod. de iuris et facti ignor.* Fagnan, in Cap. 22 de Reg., n. 8 and 10. Indeed, Fagnan himself teaches, in c. 22 de Regul., n. 10 and following, that from a profession, the greatest good is inferred, and although the monastic servitude is said to be stricter than bodily servitude, nevertheless, the Religious serves God, to serve Him is to reign. Regarding the Celites, it must be inquired whether they have lost all right to make solemn vows. For if they are in such a condition at present that either the nature of the vows is entirely opposed to them, or the requirements that the Church has established for their validity are not met, then they are to be considered to have lost all right to make solemn vows. On the contrary, if it is not clearly proven that the actual state of the Celites is contrary to the nature or conditions of solemn vows, then it must not be held that the Order of the Celites has fallen from that state of religion with solemn vows which was the right of that Order. Solemn vows carry with them an immediate, complete, and absolute surrender to the religion professed. *S. Thom. 2.2. qu. 87, 17, and qu. 189, art. 2, ad 2.* The act of making vows requires a fully deliberate intention, full knowledge, and freedom. *S. Thom. 2.2. qu. 88, art. 1.* The manner of making vows must be public, since it involves a change of state. It belongs to the Church to establish the laws of publication,

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which are currently in force. 1. The profession of vows must take place in the presence of a person who has legitimate authority. 2. It must not take place except after...

[*Latin ed. p. 395*]

MECHLINIEN. For 395 years, the novitiate period was to be completed in 3 years, according to the rule approved by the Holy See, with the obligation of living in common. There is no doubt about the intention of the Cellites to take solemn vows, since many superiors of the Cellite houses have testified that their religious subjects held firm to having professed solemn vows. One [person] in the Diocese of L. affirms that the intention of the Cellites residing in their Diocese, since 1849, has been to take only simple vows. It is, however, to be asked how such a significant change in the status of a religious order could have been accomplished solely by the authority of the Ordinary. And since such a change could only be effected by the authority of the Holy See, one must seriously doubt whether, at least in the external forum, the Cellites are bound by solemn vows. Tradition is completely lacking if a vow of chastity is considered to be such that it can, by itself, dispense [from the vow]! The Archbishop of M. testifies to the dispensations granted to the Cellite houses of A. and M. But it should be added that nothing in these dispensations concerns the nature of the vows. However, in the dispensations themselves, a clause is read – that the marriage be celebrated most secretly – which seems to presuppose the existence of a solemn vow. It must also be noted that these dispensations could have been granted when doubt had already arisen concerning the very solemnity of the vows; and that this doubt would be beneficial to those who invoked the dispensation from the fullness of power. Nor has the vow of poverty been abolished, which, given the injustice of the times and the prescriptions of civil laws, allows the Cellites to maintain, as they call it, dominion over their property. Indeed, such dominion does not contradict poverty, as is stated by the same Sacred Congregation in its responses to the questions proposed by the Reverend Father General of the Order of Preachers, on June 12, 1858, under number 9. But this [practice] is opposed only by the Cellites of the Diocese of L., and it is not permitted to be extended to other houses of the same Order. Furthermore, concerning the vow of obedience, it is necessary to inquire about the requirements of publicity and protection which the Church demands for vows.

[*Latin ed. p. 396*]

396. MECHLINIEN. Regarding the requirements that are added to the profession, he argued: these requirements must be upon case 1. The novitiate year preceding the profession must be held in the house of *Cellitas* in *Fermo*. 2. The profession must be according to the rule approved by the Holy See. 3. With the obligation of living in community. Regarding the

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fourth requirement, which is the acceptance of the profession by a legitimate authority empowered to do so, it must be investigated whether the profession made by the *Cellitas* is invalid because it is made before an authority lacking power: or whether it simply needs to be renewed, because it is made in the hands and in the name of the Ordinary. Therefore, it must first be established that a solemn profession, and therefore one of a public nature, must be made in the hands of a public authority, and by that authority accepted. This authority resides in the Pontiff, from whom subjects are derived, and as long as this delegation remains: that is, as long as it is neither suspended nor interrupted, nor taken away, it will have all its effects. Finally, the delegation may be ordinary or extraordinary, explicit or tacit, expressed or presumed. Now, since religious profession is the best act in itself, and most pleasing to the Church, it must be presumed to be worthy of the greatest favor, and in cases of doubt, it must be concluded that the jurisdiction to accept the vows is to be admitted. Another principle is: that every moral being lives and preserves its rights, as long as the last member of it remains. L. ff. "as" of each university. Glossa in C. "Statutum" on Election in 6. Glossa in C. "gratum" on postulancy. Indeed, in moral bodies, because of the law of perpetuity, the body often arises and revives again from a member. But in the subject matter, we are not dealing with a single member that still remains, but with eight religious houses, with an entire province, in which life is sustained, zeal burns, and the hope of good fruits shines brightly. It is not proper for the *Cellitas* not to have their own houses: for the Church has never declared legitimate the deprivations made by secular authority to the detriment of the Church. Regarding the lack of hierarchy, it must be distinguished: for it is one thing that...

[*Latin ed. p. 397*]

MECHLINIEN. 397 They do not possess, as before, a complete hierarchy, and they observe something quite different, namely, that they do not observe any hierarchy. Superiors are not lacking in each house. In the year 1824, there was still only one Provincial for all the Belgian houses. If they do not have a General, nor a Provincial, nor general Chapters at the present time, it must be understood that they are entirely deprived of supreme jurisdiction; but that this has passed to the Bishops. It is objected that the houses have reopened their cells again only with the consent of the Bishops, without apostolic approval. But it is established by fact that, of these eight houses, four have never been abandoned. The others have either been immediately recovered, or have been re-established in the old location; or, although forcibly entered, have been extracted again from the same territory within the same province. Only one place, Ixelles, is found to be recently founded and open. Indeed, there is no equality between the foundation of a new convent and the restoration of an old one; Ferraris v. Conventus art. 1 n. 11, 12, and 46. Monacelli, part. 1, title 6, form. 19, no. 4 and following.

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The reason for this is: because the laws which impose conditions on the erection of convents, being eminently favorable, restrictive, and excellent in themselves, must be strictly observed. Furthermore, no one should believe that religious, without any formality, can re-enter the houses from which they had been "unjustly" ejected, because 1. the unjust persecution could not injure their rights; because 2. the erection of a new convent does not include the restoration of the old one. In the other case, a most accurate history of the Order of the Cellites, from pontifical Bulls up to Clement XIV, demonstrated that they had been placed under the rule of St. Augustine, and that they were accustomed to make three solemn vows, and that they had obtained confirmation of these vows from the Supreme Pontiffs. With these and other things noted, the question was raised: whether and how, and for which houses, the Cellite brethren of Alexia are bound by solemn vows.

[*Latin ed. p. 398*]

398. MECHLINIEN. RESOLUTION. After ample discussion, the Sacred Congregation of Bishops and Regulars, on September 28, 1883, decided to respond as follows: With regard to the matter, it is the opinion that the corrected and approved constitutions for the Regular Canons of Germany, promulgated by the decree of the Sacred Congregation of Bishops and Regulars on August 12, 1870, should be applied and extended to all houses of the Congregation of the Regular Canons, or Alexians. These constitutions stipulate that their vows are to be simple, as stated in the Holy Scriptures.

FROM WHICH THE FOLLOWING ARE DEDUCED:

I. For a solemn religious profession, it is required that it be made in a religious institute approved according to its approved rule.

II. It is not sufficient for a profession if an offering and vow are made in a religious institute already approved, if the offering and vow are not made in the manner prescribed by the approved rule.

III. The same applies to religious institutes not yet approved.

IV. Furthermore, for the validity of a profession, it is required that the acceptance of the vows be canonically completed.

V. In this case, in particular, the canonical acceptance of the vows, which had previously been entrusted to a priest chosen by the Visitor of the order, no longer holds, because the manner of making the offering and vows according to the approved rule was not observed.

FROM THE SACRED CONGREGATION FOR RITUAL: DECREE CONCERNING THE CONFIRMATION OF THE CULT DEDICATED TO THE HOLY BISHOP, SERVANTOF GOD EUSTACHIUS, WHICH HAS BEEN PERFORMED FROM IMMEMORIAL TIMES.

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With the Most Reverend Canon Seraphino Maria Agostini appointed as Advocate for the aforementioned cause, and with His Eminence and Most Reverend Cardinal Raphael Monaco of Valletta presiding over the aforementioned cause,

[*Latin ed. p. 399*]

DECREE 399, ordinarily of the Congregation of Sacred Rites, signed on the day indicated, having been assembled at the Vatican, the following question was proposed: Whether the judgment rendered by the delegate judge from the Most Reverend and Illustrious Archbishop of Naples concerning the cult rendered from time immemorial to the aforementioned Servant of God, or concerning the exception from the decrees of the aforementioned Pope Urban VIII, should be confirmed in this case, and to the effect of what is being discussed? The Most Reverend Fathers entrusted with safeguarding the sacred rites, after mature deliberation, and having heard the voice and written opinion of the Reverend Father Augustine Gapara, Promoter of the Holy Faith, decided to respond: "It is established that there is an exception from the decrees of the aforementioned Pope Urban VIII, or from the cult rendered from time immemorial." December 12, 1884. These matters, faithfully reported to His Holiness by the undersigned Secretary, were approved and confirmed by His Holiness on the 18th of the same month and year.

D. CARDINAL BARTOLINIUS, Prefect, S. R. C.

L-SB s. LAURENTIUS SALVATI, Secretary, S. R. C.

DECREE OF THE NEAPOLITAN Congregation for Beatification and Canonization concerning the Venerable Servant of God, Caietan Errico, Founder of the Congregation of the Sacred Hearts.

CONCERNING THE QUESTION: "Whether a Commission for the Introduction of the Cause should be appointed in this case, and to the effect of what is being discussed?"

The Lord, who governs His beloved Church with ineffable providence, does not cease to render her, even in this most miserable age, a mother rejoicing in the sanctity of her illustrious children. Among these, the Servant of God, Caietan Errico, deserves to be numbered. He was born in the town of Secundigliano, near Naples, in the year 1791, of honest parents, and from his earliest years, he excelled in piety and modesty, so that, even as a young man, he was commonly called a saint. But the splendor of his sanctity shone more brightly when he was raised to the dignity of the priesthood. For he burned with such zeal for the salvation of souls that he not only ministered within the confines of his own town, but also offered the aid of his ministry to other people, as far as he could, and, with the help of the divine Spirit, he possessed such persuasive power of speech that he softened even the hardest hearts. To perpetuate these works of ministry, a Congregation of

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Missionaries was founded.

[*Latin ed. p. 400*]

400. The Decree for the founding of the congregations dedicated to the Sacred Hearts, which were entirely devoted to the salvation of souls, overcame every human obstacle. And indeed, after many arduous labors and frequent difficulties, which the enemy, seeking to deter this man of God from his holy purpose, stirred up, it flourished and grew abundantly, and until his death, he presided over it with the unanimous support of his colleagues. Finally, in the year 1860, on October 26th, weakened more by labors than by years, surrounded by the beloved sons of his congregation, preaching mutual charity, he peacefully passed away. Furthermore, the fame of his sanctity, by which he shone while living, has wonderfully increased after his death, and it continues to flourish; hence, he is invoked by the faithful as if he were a mediator with God, and many give thanks to God for graces received through his intercession. Therefore, by ordinary authority, a process concerning the fame of the sanctity, virtues, and miracles of this Servant of God can be conducted in the Neapolitan ecclesiastical court in the Congregation of Sacred Rites, without the intervention or vote of consultants, even though less than a decade has passed since the presentation of the ordinary process in the records of the same Sacred Congregation, and even though the writings of the aforementioned Servant of God have not yet been thoroughly investigated and examined. However, His Eminence and Most Reverend Lord Cardinal Thomas Maria Martinelli, Relator of this cause, at the request of the Reverend Father Angel De Maria, Priest of the Congregation of the Sacred Hearts, Postulator of this cause, in the Ordinary Meetings of the Sacred Rites, convened on the date indicated at the Vatican, proposed the following question for discussion: namely, whether a commission should be appointed for the introduction of the cause, and for the purpose in question. His Eminence and the Most Reverend Fathers, Prefects of the Sacred Rites, after carefully considering all matters, and after hearing the voice and written opinion of the Reverend Father Augustine Caprara, Promoter of the Holy Faith, decided to respond: Affirmative, that is, that a commission should be appointed, if it pleases the Most Holy [Father]. On December 12, 1884. Having faithfully reported all of the above to His Holiness, Our Most Holy Father Leo XIII, His Holiness, approving the decision of the Sacred Congregation, deigned to sign the commission for the introduction of the cause of the aforementioned Venerable Servant of God, Caietani Errico, on the 18th of the same month and year.

D. CARDINAL BARTOLINIUS, S.R.C., Prefect.

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L. S. LAURENTIUS SALVATI, S.R.C., Secretary.

[*Latin ed. p. 401*]

401 FROM A DECREE OF THE SACRED CONGREGATION FOR INDULGENCES, by which it is granted to those who are legitimately hindered, and who do not have a crucifix blessed for this purpose, to gain the indulgences attached to the exercise of the Stations of the Cross, provided they perform this pious exercise with a person who holds a crucifix.

MOST HOLY FATHER, Brother Bernardinus of the Port of Rome, Minister General of the entire Order of Friars Minor, of the Brothers of Saint Francis, humbly prostrates himself before Your Holiness and explains that, frequently, the faithful who are legitimately prevented from performing the exercise of the Stations of the Cross are also prevented from gaining the indulgences attached to this exercise, because they do not possess a crucifix blessed for this purpose, as happens in the families of the poor, in hospitals, and in other places of this kind.

Therefore, in order that devotion to the Passion of Our Lord Jesus Christ may be increased ever more, and that the faithful, especially those souls detained in Purgatory, may not be deprived of participation in the aforementioned indulgences due to the lack of a crucifix, the petitioner humbly implores Your Holiness to deign to extend the indulgence granted by the Most Holy Pope Pius IX, in order to encourage the recitation of the Rosary, on January 22, 1858, by Decree authorized, no. 384 (1), in the following manner:

(1) The decree, concerning which the matter is: On January 22, 1858, the following question was put to the Most Holy Father by the Procurator General of the Order of Preachers, and was to be answered: "Whether it is permissible for the Procurator General to use, in the recitation of the Rosary, the formula 'in the hands of the Holy Father,' and whether it is permissible for the Most Holy Father to grant that all Christians, of both sexes, may gain the indulgences granted by the Most Holy Pope Pius IX, even if they recite the Rosary, or a third part of it, in common, provided that they are not preoccupied with other matters, and that they offer their prayers for the good of the Church, together with a person who holds a blessed crucifix, and whether it is sufficient that only one person, whoever it may be from the community, holds the Rosary."

The Most Reverend Fathers, after having heard the aforementioned question, and after mature deliberation in the general meetings held in the Vatican palaces on December 14, 1857, answered affirmatively.

After hearing this, on January 22, 1858, in an audience granted to the undersigned, the Most Holy Father, inclined by the prayers of the aforementioned Procurator General, and after having consulted, deigned to grant that all Christians, of both sexes, may gain the indulgences granted by the

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Most Holy Pope Pius IX, even if they recite the Rosary, or a third part of it, in common, provided that they are not preoccupied with other matters, and that they offer their prayers for the good of the Church, together with a person who holds a blessed crucifix.

P. [Illegible]

Acta, ex communitate, Tom. XVII, fasti.

CC. CARD. ASQUINIUS, A. COLOMBO

Praef. Secretarius.

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[*Latin ed. p. 402*]

402 DECREE: That all the faithful, of both sexes, may be able to gain the indulgences attached to the Stations of the Cross by reciting the twenty Our Fathers, Accents, and Glories, even if they do not hold the blessed Crucifix in their hand, and it suffices that only one person, whoever they may be from the community, holds it in their hand, while the others, setting aside all other concerns, prepare themselves for prayer, together with the person who holds the Crucifix. This grace, etc. Our Most Holy Lord Pope Leo XIII, in an audience held on January 19, 1884, graciously granted the request, made by the undersigned Secretary of the Sacred Congregation for Indulgences and Sacred Relics, namely, that the faithful, for whom the indulgence has already been granted for the recitation of the Holy Rosary, may, if they properly prepare themselves for the pious exercise of performing the Stations of the Cross with the person who holds the Crucifix, gain the indulgences of the Stations of the Cross. This decree is valid forever, without any brief being required, notwithstanding anything to the contrary. Given in Rome, from the Secretariat of the aforementioned Sacred Congregation, on January 19, 1884. A. L. CARD. OREG-LIA A S. STEPÏÏ. PREFECT. FRANCISCUS DELLA VOLPE, SECRETARY.

[*Latin ed. p. 403*]

403 DECREE whereby various indulgences are granted to those who recite the prayers before and after Mass (1). Most Blessed Father, D. Adelelmus Foppiano, O.S. Benedicti, prostrate before Your Holiness, desiring that all priests may obtain indulgences by reciting certain prayers during the celebration of Mass, humbly implores that Your Holiness deign to grant:

(L) PRAYERS BEFORE THE CELEBRATION OF MASS

a) An indulgence of one year for the recitation, in addition to the five Psalms: "Quam dilecta est," "Benedixisti, Domine," "Inclina Domine," "Credidi," and "De profundis," with the verses and seven attached prayers,

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the Prayer of St. Ambrose, assigned to each day of the week, namely: The Prayer of St. Ambrose, the Bishop (distributed throughout the days of the week).

ON SUNDAY.

Supreme Priest, and true Pontiff, Jesus Christ, who offered Yourself to God the Father as a pure and immaculate sacrifice on the altar of the Cross for us, the miserable and sinful, and who gave us Your Flesh to eat and Your Blood to drink, and established this mystery through the power of Your Holy Spirit, saying: "This, whenever you do it, you shall do it in memory of Me," I beseech You through the same Blood, the great price of our salvation, I beseech You through this wondrous and ineffable charity, by which You have deigned to love us, the miserable and unworthy, so much as to cleanse us from our sins in Your Blood: teach me, Your unworthy servant, whom among Your other gifts You have also deigned to call to the office of priesthood, not through my merits, but solely through the grace of Your mercy; teach me, I beseech You, through Your Holy Spirit, to treat this mystery with such reverence and honor, such devotion and fear, as is fitting and proper. With generous indulgences, and those which have been granted to some, so that the priests may be more easily excited to recite these prayers, (1) These are different from those already published by others, and for this reason, the Holy Father requests that these be made known, so that the priests may be encouraged to recite these prayers. In order that these prayers may be more quickly spread, we also submit the text to our editors, as has been presented to the Congregation.

[*Latin ed. p. 404*]

404 DECREE: Grant me, through your grace, always to believe and understand this great mystery, to feel it and hold it firmly, to speak and think of it in a way that pleases you, and that is beneficial to my soul. Let your good spirit enter my heart, so that it may sound there without a sound, and speak all truth without the clamor of words. For these things are indeed very profound, and are veiled in a sacred covering. Through your great mercy, grant me to celebrate the solemnities of the Mass with a pure heart and a clean mind. Free my heart from impure and wicked, vain and harmful thoughts. Protect me with the pious and faithful guardianship and strongest protection of the blessed Angels, so that the enemies of all good may be confounded and depart. Through the power of this great mystery, and through the hand of your holy Angel, repel from me and from all your servants the harsh spirit of pride and vainglory, envy and blasphemy, fornication and impurity, doubt and distrust. Let those who persecute us be confounded; let those who hasten to destroy us perish.

FERIA. I I. O King of Virgins, and Lover of chastity and integrity, extin-

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guish with the heavenly dew of your blessing the fuel of burning lust in my body, so that the tenor of chastity may remain in me, both in body and soul. Mortify the stirrings of the flesh in my members, and all lascivious movements, and grant me true and perpetual chastity with the other gifts that please you in truth; so that I may be able to offer you a sacrifice of praise with a chaste body and a pure heart. How much contrition of heart and a fountain of tears, how much reverence and trembling, how much bodily chastity and purity of soul, is this divine and heavenly sacrifice to be celebrated, where your flesh is truly taken, where your blood is truly drunk, where the lowest things are joined to the highest, where earthly things are joined to divine things, where the presence of the holy Angels is present, where you are the Sacrifice and the Priest, wonderfully and ineffably constituted!

FERIA I I I. Who can worthily celebrate this mystery, except you, Almighty God, if you do not make the one offering worthy? I know, Lord, and I truly know, and I confess this very thing to your piety, that I am not worthy to approach such a mystery because of my excessive sins and my countless negligences. But I know, and I truly believe with all my heart, and I confess with my mouth, that you can make me worthy, you alone who can make something clean come from an unclean seed, and just and holy things from sinners. Through this your omnipotence, I beseech you, my God, to grant me, a sinner, to celebrate this sacrifice with fear and trembling, with purity of heart and a fountain of tears, with spiritual joy and heavenly delight. May my mind feel the sweetness of your most blessed presence, and may the watch of your holy Angels be around me.

FERIA I V. For I, Lord, remembering your venerable Passion, approach your altar, although I am a sinner, to offer you a sacrifice that you yourself have instituted.

[*Latin ed. p. 405*]

RESCRIPTUM 405 you have decreed, and you have commanded that it be offered in your commemoration, for our salvation. Receive it, I beseech you, O highest God, for your holy Church, and for the people whom you have redeemed with your blood. And since you willed that I, a sinner, should be a mediator between you and your people, although you may not recognize any good work in me, do not refuse the office of the entrusted dispensation, lest, through me, the price of their salvation perish, for whom the saving Victim deigned to be and redemption. I also offer to you, O Lord, if you deign to look upon me with mercy, the tribulations of the people, the dangers of nations, the groans of captives, the miseries of orphans, the needs of pilgrims, the poverty of the weak, the despair of the sick, the failings of the aged, the sighs of the young, the vows of virgins, the lamentations of widows. FERIA V. For you have mercy on all, O Lord, and you hate nothing that you have made. Remember what our substance is,

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because you are our Father, because you are our God, lest you be angry too much, nor continue the multitude of your bowels against us. For we do not lay our prayers before your face in our justifications, but in your many mercies. Take away from us our iniquities, and kindly kindle in us the fire of the Holy Spirit. Take away the stony heart from our flesh, and give us a fleshy heart, which may love you, cherish you, delight in you, follow you, and enjoy you. We pray, O Lord, for your mercy, that you may deign to look upon your family, performing the offices of your sacred name, with a serene countenance; and that no vow may be unfulfilled, no request empty, but suggest to us prayers which you yourself are pleased to hear and to grant. FERIA V I. We also ask you, O holy Father, for the souls of the faithful departed: that it may be for them salvation, health, joy, and refreshment, this great Sacrament of piety. O my God, let it be a great and abundant feast for them today of you, the living bread, who descended from heaven and gives life to the world, of your holy and blessed flesh, that is, of the unblemished Lamb, who takes away the sins of the world, which was taken up from the womb of the most holy and glorious Virgin Mary, and was conceived by the Holy Spirit, and from that fount of piety, which flowed from your most sacred side through the spear; that, being refreshed and satisfied, and comforted, they may rejoice in your praise and glory. I ask for your mercy, O Lord, that the fullness of your blessing and the sanctification of your divinity may descend upon the bread offered to you in sacrifice. Descend also, O Lord, that invisible and incomprehensible majesty of your Holy Spirit, as it descended upon the sacrifices of our forefathers, that it may make our offerings your Body and Blood, and that it may teach me, who am unworthy, to treat this mystery with the purity of heart and the devotion of tears, with reverence and trembling, so that you may peacefully and benignly accept the sacrifice from my hands for the salvation of all, both living and departed.

[*Latin ed. p. 406*]

406 DECREE: On Saturday, I also beseech you, Lord, through that most holy mystery of your Body and Blood, by which we are daily fed and refreshed in your Church, cleansed and sanctified, and made partakers of the one supreme divinity: grant me your holy virtues, so that, filled with them, I may approach your Altar with a good conscience, that these heavenly Sacraments may be health and life to me. For you yourself said with your holy and blessed mouth: "My flesh is meat indeed, and my blood is drink indeed. He that eateth my flesh, and drinketh my blood, shall live forever." Most sweet Bread, heal the palate of my heart, that I may feel the sweetness of your love. Heal it from all weakness, so that I may feel no sweetness except from you. Whitest Bread, containing all delight and all flavor, which always refines us, and in which you never fail: may my heart eat you, and may the sweetness of your flavor fill the depths of my soul. May the Angel

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eat you with a full mouth; may the pilgrim eat you according to his ability, so that he may not fail on the way, but be refreshed by this provision. Holy Bread, living Bread, pure Bread, which descended from heaven and gives life to the world, come into my heart, and cleanse me from all defilement of flesh and spirit. Enter into my soul, and heal and cleanse me inwardly and outwardly. Be a protection, and a constant salvation to my soul and body. Repel those who assail me; let them depart far from the presence of your power, so that, fortified by you both within and without, I may reach your kingdom by the straight path: where we shall see you face to face, when you shall deliver the kingdom to God and the Father, and shall be all in all. Then you will satisfy me with yourself in a wonderful way, so that I shall never hunger nor thirst forever. Who lives and reigns with the same God the Father, and the Holy Spirit, forever and ever. Amen. b) Indulgence of one hundred days for the recitation of the following prayer: The Prayer of Saint Ambrose. To the table of your most sweet banquet, pious Jesus Christ, I, a sinner, presuming nothing of my own merits, but trusting in your mercy and goodness, approach and tremble. For my heart and body are stained with many sins, and I do not guard my mind and tongue with care. Therefore, O pious God, O tremendous Majesty, I, a poor wretch caught in distress, turn to you, the fountain of mercy, I hasten to you to be healed, I flee to your protection: and I sigh to have a Savior whom I cannot endure as a judge. To you, Lord, I show my sorrows; to you, I confess my shame. I know my sins are many and great, for which I fear. I hope in your mercies, which are innumerable. Look upon me, therefore, with the eyes of your mercy, Lord Jesus Christ, eternal King, God and man, crucified for the sake of man. Hear me, hoping in you, have mercy on me, full of miseries and sins, you who are the fountain of mercy.

[*Latin ed. p. 407*]

RESCRIPTUM 407, concerning which you shall cease. Hail, saving Victim, offered for me and for all mankind on the rack of the cross. Hail, noble and precious Blood flowing from the wounds of my crucified Lord Jesus Christ, and washing away the sins of the whole world. Remember, O Lord, your creatures, whom you have redeemed with your Blood. I am sorry for having sinned, I desire to amend what I have done. Take away from me, therefore, O most merciful Father, all my iniquities and sins; that, purified in mind and body, I may worthily partake of the holy things; and grant that this holy Communion of your Body and Blood, which I, unworthy, intend to receive, may be a remission of my sins, a perfect purgation of my offenses, a flight of all vile thoughts, a regeneration of good desires, and a salutary efficacy for pleasing works, and also the firmest protection of my soul and body against the snares of my enemies. Amen. c) A hundred days' indulgence for the recitation of the following Prayer of St. Thomas Aquinas. The Prayer of St. Thomas Aquinas: Almighty and eternal God,

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behold, I approach the Sacrament of your only-begotten Son, our Lord Jesus Christ; I approach as the sick to the physician of life, the impure to the fountain of mercy, the blind to the light of eternal clarity, the poor and needy to the Lord of heaven and earth. I beseech you, therefore, by the abundance of your immense generosity, that you may deign to heal my infirmity, cleanse my impurity, enlighten my blindness, enrich my poverty, clothe my nakedness; that I may receive the Bread of Angels, the King of kings, and the Lord of lords, with such reverence and humility, such contrition and devotion, such purity and faith, with such purpose and intention, as is fitting for the salvation of my soul. Grant me, I beseech you, not only to receive the Sacrament of the Lord's Body and Blood, but also the very thing and the power of the Sacrament. O most merciful God, grant me the Body of your only-begotten Son, our Lord Jesus Christ, which was born of the Virgin Mary, so that I may worthily be incorporated into his mystical body and numbered among his members. O most loving Father, grant me your beloved Son, whom I now propose to receive veiled, that I may finally contemplate his face revealed, who lives and reigns with you in unity with the Holy Spirit, God, forever and ever. Amen. d) A hundred days' indulgence for the recitation of the following Prayer to all the Angels and Saints. Prayer to All the Angels and Saints: Angels, Archangels, Thrones, Dominations, Principalities, Powers, Virtues of heaven, Cherubim, and Seraphim, all the Saints and all the Holy ones of God, especially my Patrons, deign to intercede for me, that I may be able to offer this Sacrifice worthily to Almighty God, for the praise and glory of his name, and for my own benefit, and for the benefit of the whole Church. Amen.

[*Latin ed. p. 408*]

408 DECREE: An indulgence of one hundred days is granted for the recitation of the following prayer, to be said only when the Priest celebrates Mass in honor of the Saint or Blessed. The prayer is to be said only when the Priest celebrates Mass in honor of the Saint or Blessed. O Holy [Saint's Name], behold me, a poor sinner, confident in your merits, I now offer the most sacred Sacrament of the Body and Blood of our Lord Jesus Christ for your honor and glory. I humbly and devoutly beseech you to deign to intercede for me, that I may be able to offer this sacrifice worthily and acceptably, that I may be able to praise Him eternally with you, and with all the elect, and to reign with Him. Who lives and reigns world without end. Amen. g> IL (PRAYERS AFTER THE CELEBRATION OF MASS) a) An indulgence of one year is granted for the recitation, in addition to the customary Canticle – "Benedicite," etc. – and the Psalm – "Laudate," etc., with the verses and three prayers attached, of the two following prayers, one of which is of St. Thomas, and the other of St. Bonaventure. The Prayer of St. Thomas Aquinas: I give thanks to you, holy Lord, Almighty Father, eternal God, who, without my merits, but solely through the dignity of

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your mercy, have deigned to satisfy me, a sinner unworthy of your servant, with the precious Body and Blood of your Son, our Lord Jesus Christ. And I pray that this holy Communion may not be a cause of punishment for me, but an intercession for forgiveness, that it may be an armor of faith and a shield of good will. May it be the emptying of my sins, the extermination of lusts and concupiscence, the increase of charity and patience, humility and obedience, and of all virtues: against the snares of all enemies, both visible and invisible, a firm defense; a perfect quieting of my movements, both carnal and spiritual; a firm adherence to you, the one true God; and a blessed consummation of my end. And I pray that you may deign to lead me, a sinner, to that unspeakable feast, where you, with your Son and the Holy Spirit, are the true light, the full satisfaction, the eternal joy, the perfect delight, and the perfect happiness. Through the same Christ our Lord. Amen. The Prayer of St. Bonaventure: Transform, sweetest Jesus, the marrow and the very substance of my soul with the sweetest and most salutary wound of your love, with true, serene, and most holy charity, that my soul may languish and melt away solely...

[*Latin ed. p. 409*]

RESCRIPTUM 409: Out of love and desire for you, may I yearn for you, and may my soul be consumed with longing in your courts; may I desire to be dissolved and to be with you. Grant that my soul may hunger for the bread of angels, the refreshment of the holy souls, our daily bread, which contains all sweetness and savor, and all delight of sweetness; may my heart always hunger and feed on you, in whom the angels desire to gaze, and may the inner parts of my soul be filled with the sweetness of your flavor; may I always thirst for you, the fountain of life, the fountain of wisdom and knowledge, the fountain of eternal light, the torrent of delight, the abundance of the house of God; may I always seek you, may I inquire after you, may I find you, may I strive towards you, may I reach you, may I meditate on you, may I speak to you, and may I accomplish all things for the praise and glory of your name, with humility and discretion, with love and delight, with ease and affection, with perseverance until the end; and may you be my only hope always, my entire trust, my riches, my delight, my joy, my rest and tranquility, my peace, my sweetness, my fragrance, my sweetness, my food, my refreshment, my refuge, my help, my wisdom, my portion, my possession, my treasure, in which my mind and my heart may always be firmly and immovably rooted. Amen.

b) Indulgence of one hundred days for the recitation of the following hymn of St. Thomas.

Hymn of St. Thomas Aquinas to the Holy Eucharist:

Adoro te devote, latens Deitas,

Quae sub his figuris vere latitas;

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Tibi se cor meum totum subiicit,
Quia te contemplans, totum deficit.
Visus, tactus, gustus in te fallitur,
Sed auditu solo tuto creditur.
Credo quidquid dixit Dei filius.
Nihil hoc verbo veritatis verius.
In Cruce latet sola Deitas,
At hic latet simul et humanitas:
Ambo tamen credens, atque confitens,
Peto quod petivit latro poenitens.
Plagas, sicut Thomas, non intueor,
Deum tamen meum te confiteor,
Fac me tibi semper magis credere,
In te spem habere, te diligere.
O memoriale mortis Domini,
Panis vivus, vitam praestans homini:
Praesta meae menti de te vivere;
Et te illi semper dulce sapere.
Pie pellicane Iesu Domine,
Me immundum, munda tuo sanguine:
Cuius una stilla salvum facere
Totum mundum quit ab omni scelere.

[*Latin ed. p. 410*]

410 DECREE of Jesus, which I now, veiled, implore: May it come to pass, that beholding your face revealed, I may be blessed by the sight of your glory. Amen. c) Indulgence of one hundred days for the recitation of the prayer of St. Alphonsus Mary of Liguori, Bishop, assigned for each day of the week, as follows. The prayers of St. Alphonsus Mary of Liguori, Bishop, for each day of the week. ON SUNDAY, Most Beloved Jesus, Redeemer, and God, I adore you present within my heart under the species of bread and wine, by which you have become the food and drink of my soul. May your coming into my soul be infinitely blessed, my God, and for this great benefit, I give you thanks from the bottom of my heart, and I grieve that I cannot adequately repay you. And what worthy acts of thanksgiving could a humble servant offer, if he were to see his own lord visiting him in his humble home, except to prostrate himself at his feet, and to silently admire and praise such great condescension? Therefore, I fall before you, O divine King, O most sweet Jesus, and I adore you from the depths of my lowliness. I join my adoration to the adoration that the most blessed Virgin Mary offered to you when she received you into her most holy womb, and I

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would wish to follow her with the same love. O lovable Redeemer, today, obeying my words, you descended from heaven into my hands: and I? alas! how often, by disobeying your commandments, have I scorned you, and rejected your grace and your love! O good Jesus, I trust that you have already granted me forgiveness for my sins; and if, through my fault, you have not yet granted it to me, I beseech you now, O infinite Goodness, for I repent with all my heart for having offended you. Would that I had always loved you, O Jesus! At least from the day that I celebrated my first Mass, I should have burned only for you. You have chosen me from among thousands to be your priest and your friend; what more could you have done to be loved by me? But I give you thanks because you grant me time to do what I have neglected to do. I wish to love you with all my heart. I will not admit any affection in my heart except for you, who have compelled me to return to you through so many benefits. My God and all. O my God, what riches! what honors! what worldly pleasures! you are everything to me. You alone will be henceforth my only good, my only love. I will say to you with St. Paulinus: Let the rich have their riches, let the kings have their kingdoms; for me, Christ is glory and kingdom. Let kings and the rich of the earth enjoy their kingdoms and their riches; you, O good Jesus, will be my riches and my kingdom, you alone. O eternal Father, through the love of this your Son, whom I offer to you today, and whom I receive into my heart, I beseech you, grant me holy perseverance in your grace, and the gift of your holy love. I also commend to you...

[*Latin ed. p. 411*]

RESCRIPTUM 41. To my friends, both spiritual and temporal; to the souls in Purgatory; and to all sinners. O my Mother, most holy Mary, obtain for me holy perseverance and the love of Jesus Christ.

FERIA II. O infinite goodness! O infinite love! God has given Himself entirely to me; He has become entirely mine! My soul, summon all your affections, and unite yourself intimately with the Lord, who has come to you with outstretched hands, so that He may be united to you and redeemed by you. O lovable Redeemer, I embrace you; with all my love, I join myself to you; do not despise me. Alas! At some time in my life, I rejected you from my soul, and I separated myself from you; but in the future, I would rather a thousand times give my life than lose you again, my greatest good. Forgive me, Lord, for all the injuries I have done to you, and have mercy on me; I am deeply sorry for them, and I would rather die than feel such pain. Although I have sinned against you, you command me to love you: "Thou shalt love the Lord thy God with thy whole heart, and with thy SSoul, and with thy whole strength." O my Lord, who am I that you should desire to be loved by me? Because you desire it, I wish to love you. You willed to suffer death for me, and you gave your flesh as food for me; I renounce everything, I bid farewell to all, and I embrace only you, my most beloved Savior. What

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can separate me from the love of Christ? O lovable Redeemer, and whom else do I wish to love, except you, who are infinite goodness, and worthy of infinite love? What is there in heaven for me? And what have I desired on earth, except you? God of my heart, and my portion forever. Indeed, my God, and where, whether in heaven or on earth, can I find a good greater than you, or one who has loved me more than you? May your kingdom come. Oh! Good Jesus, take, I beseech you, this morning the dominion of my whole heart; I give it entirely to you. May you always and entirely possess it, and may you repel from it all affections that are not for you. I choose you alone as my portion, and as my riches: God of my heart, and my portion, God, forever. Grant that I may always have in my mouth the words of St. Ignatius of Loyola, and may I pray: "Grant me the grace to love you alone, and I shall be rich indeed." Give me your love and your grace, that is to say, make me love you, and love me in return, and I shall be rich indeed, and I shall desire nothing more, nor seek anything else. But you know my weakness, and how often I have been unfaithful to you; therefore, help me with your grace, and never permit me to be separated from your holy love. Do not permit me to be separated from you. I say this now, and I always wish to say it, and may you grant me this, so that I may always be able to say it to you: Do not permit, do not permit me to be separated from you. O most holy Virgin, my hope, Mary, obtain for me from God this double grace: holy perseverance and holy love; I ask nothing more from SSfrom you.

[*Latin ed. p. 412*]

RESCRIPTUM 412. WEDNESDAY. Oh! My Lord, how often have I offended you, knowing that by sinning I displeased you greatly? Through the merits of your Passion, I beg you, forgive me, and bind me to you with the bonds of your love; let not the stench of my sins separate me from you. Grant that I may always recognize your goodness and the love that is due to you, and the charity with which you have loved me. I desire, good Jesus, to devote myself entirely to you, who willed to offer yourself as a sacrifice for me. You have bound me to you with countless proofs of your love; please, do not allow me ever to be separated from you. I love you, my God, and I wish to love you always. And how can I be separated from you, and live without your grace, when I have come to know your love? I thank you for having borne with me when I lived without your grace, and for still granting me time to love you. If death had come to me then, I would not have been able to love you more. Now that I can still love you, I wish to love you with all my strength, most sweet Jesus, and to please you in all things. I love you, O infinite Goodness, I love you more than myself; and because I love you, I give you my body, my soul, and my entire will. Do with me as you please, I submit myself to you in all things. As long as you grant me the grace to always love you, I ask for nothing else. Give temporal goods

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to those who desire them; I desire nothing else, and I ask for nothing but perseverance in your grace, and your holy love. Confiding in the promises of your Son, I say: And in that day you shall not ask me any thing. Amen, amen, I say to you: if you ask the Father any thing in my name, he will give it you (John 16:23). In the name of Jesus Christ, I ask for the grace of persevering, and for the grace of loving you with all my heart, and of perfectly fulfilling your will henceforth. O Jesus, you became a victim for me, and you gave yourself to me, so that I may give myself to you, and offer my will as a sacrifice to you, for you say: "Give me your heart, my son" (Proverbs 23:26). Behold, my heart, O Lord, behold my heart, and my soul, which I give to you, and I dedicate entirely to you. Truly, you know, O Lord, my weakness: help me; do not allow me to sin against you by receiving this offering from me. By no means: do not allow this; grant that I may always love you, make me love you as a priest ought to love you; and just as your Son, dying on the cross, could say: "It is finished," may I be able to say in my death, that from this day I have kept your commandments. Grant that in all temptations and dangers, I may always return to you, and that I may not fail to implore your help through the merits of Jesus Christ. O most holy Mary, who can obtain anything from God, obtain for me this grace, that in temptations I may always flee to God, and to you. THURSDAY. Oh! Jesus, my Lord, I see how much you have worked and suffered, so as to impose the necessity of loving you upon me, and I have shown myself so ungrateful to you!

[*Latin ed. p. 413*]

RESCRIPTUM 413: For a vile pleasure and a wicked desire, I have changed your grace, and I have lost you, O God of my soul! I have pursued the benefits of creatures and pleasant memories, and I have shown myself ungrateful to you alone. Forgive me, my God; I grieve at the crime of such ingratitude, and I repent with all my heart, and I hope for forgiveness from you, since you are infinite goodness. If you were not infinite goodness, I would despair, and I would not dare to implore your mercy any longer. I give thanks to you, my love, because you have not condemned me to hell, which I have deserved, and because you have sustained me for so long. Your patience alone, O my God, ought to draw me to love you. Who ever could have tolerated me, except you, who are the God of infinite mercy? For a long time, you have invited me to love you; I no longer wish to resist your love; behold, I offer myself to you completely. I have sinned enough against you; now I want to love you. I love you, O highest Good of mine; I love you, O infinite Goodness; I love you, my God, who are worthy of infinite love, and I wish to repeat this always, in time and in eternity: I love you, I love you. - O God, and how many years have I lost, in which I could have loved you and progressed in your love, and I have used them to sin against you! But your blood, O Jesus, is my hope. I hope never to cease

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loving you. I do not know how much time I have left to live; but whatever time remains to me, whether short or long, I consecrate it entirely to you. You have waited for me until now for this purpose. I wish to please you; I wish to love you always, my most beloved Lord, and I wish to love only you. What delight! What riches! What honor! You alone, my God, you alone, you alone are, and always will be, my love, and everything. But I can do nothing unless you help me with your grace. I beg you to heal the wounds of my heart, to inflame it with your holy love, and to unite me completely to you, and to unite me in such a way that I may never be separated from you. You have promised to love those who love you: "I love those who love me" (Proverbs 8:17). Now I love you: spare my boldness, love me also, and do not allow me to do anything that would prevent you from loving me: "He who does not love remains in death" (1 John 3:14). Free me from this death, in which I am hindered from loving you. Make it so that I may always love you, so that you may always be able to love me; and so that our love may be eternal, and may never be dissolved between you and me. Grant this, eternal Father, through the love of Jesus Christ. Grant this very thing, most delightful Jesus, through your merits, in which I always trust that I will love you, and that you will always love me. O Mary, Mother of God, and my mother, pray for me to Jesus. FERIA Y. O God of infinite majesty, behold the sinner prostrate at your feet, who has so grievously offended you! You have endured my sins many times, and I, despising the benefits and safeguards that you have given me, have offended you again. Others have sinned in darkness; but I have sinned in the light. But hear the voice of this son of yours, whom I have just offered to you, and who is now in my heart, pleading for mercy and forgiveness for me with you. Spare me, O infinite Goodness, through the love of Jesus Christ, because I deeply regret having offended you.

[*Latin ed. p. 414*]

414 DECREE: I know that you, O Jesus Christ, delight in pleasing yourself through sinners: "For it pleased the Father to have all fullness dwell in him" (Colossians 1:19, 29). Therefore, through the love of Jesus Christ, may you also be pleased with me. Do not cast me away from your presence, even though I deserve it; have mercy on and change my heart. Create in me a clean heart, O God. Do this, at least, for your own honor, since you have chosen me as a priest and minister to offer you your own Son. Make me live as befits a priest. Give me a heart with which a priest ought to love you. I implore you, extinguish and destroy within me, with the fire of your love, all earthly affections. Make me so that I may henceforth prove myself pleasing to you for so many benefits conferred upon me, and for so much love with which you have loved me. If I have scorned your friendship in the past, now I value it more than all the kingdoms of the world, and I place your favor above all riches, both of heaven and of earth. - O my Father,

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through the love of Jesus Christ, separate me from all things. You desire that your priests be completely separated from all that is in the world, and that they live only for you, and for the works of your glory. Separate Saul and Barnabas for the work to which I have taken them (Acts 13:2). I know that you also require this of me, and I intend to do it, but help me with your grace. Draw me completely to yourself. Grant me patience and conformity to your will in my labors and adversities. Grant that through your love I may mortify myself. Grant me the spirit of true humility, so that I may rejoice to be considered lowly and imperfect. Teach me to do your will, and reveal to me what you require of me, for I desire to fulfill it. Receive me, my God, as a sinner who in the past has sinned against you too much, but who now truly loves you and desires to be yours. O eternal God, I hope that you will love me forever. And therefore, I also want to love you very much in this life, so that I may be able to love you very much in eternity. - And because I love you, I desire to know and love you in all things. And therefore, Lord, since you have made me your priest, make me work for you, and dedicate myself to the salvation of souls. I hope for all these things through the merits of Christ Jesus, and through the intercession of my mother, Mary.

FERIA. V. O Jesus! and how could you have chosen me from so many to be your priest? Me, who have so often turned my back on you, and who have scorned your grace for nothing? Most beloved Lord, I grieve from the bottom of my heart for my sins. Tell me, have you forgiven my sins? I hope so. For you are my Redeemer, not only once, but as often as I have confessed to you. Ah, my Savior, I would never offend you! Make me, I beg you, feel what you said to Mary Magdalene: "Your sins are forgiven." Make me feel that I am already received into your grace, giving me great sorrow for my sins. Into your hands I commend my spirit; you have redeemed me, O Lord, God of truth. Oh! most divine Shepherd, you descended from heaven to find me, the lost sheep, and you descend daily above the altar for me; you gave your life to save me, do not abandon me. Into your hands I commend my soul, receive it graciously, and never allow me to be separated from you. - You have given everything for me, with your blood.

[*Latin ed. p. 415*]

RESCRIPTUM 415. You have known my name; therefore, I beseech you, assist your servants, whom you have redeemed with your precious Blood. Now you are my advocate, not my judge; implore forgiveness for me before your Father; grant me the light and strength to love you with all my heart. May the remainder of my life pass in such a way that, when I see you as my judge, I may see you pleased with me. I beseech you, Regna, let your love dwell in my heart, and make me entirely yours; and therefore, O loving Savior, always remind me of the love with to which you loved me, and how much you worked and suffered to save me, and to be loved by me.

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For this, you made me a priest, so that I may love nothing besides you. – Jesus, my Lord, I truly desire to please you; I love you, and I desire to love nothing else besides you. – Make me humble and patient in the labors of this life, meek in humiliations, averse to earthly delights, detached from creatures, and grant that I may cast out of my heart all affections that are not directed towards you. I implore all these things from you, and I hope for them through the merits of your Passion. O Jesus, most delightful, most lovable Jesus, O good Jesus, hear me. O my Mother, and my hope; Mary, you also hear me, and pray to Jesus for me.

SABBATH. Speak, O Lord, for your servant hears (1 Kings 3:10). O most loving Jesus, you have come even this morning to visit my soul; I give you heartfelt thanks. Since you have come to me, speak, I beseech you, and tell me what you want from me, for I am willing to do all things. I do not deserve that you should speak to me further, because I have often refused to hear your voice, by which you called me to your love, and I have turned my back on you ungratefully. But I have now repented of my sins, I repent of them again now, and I am confident that I have already obtained forgiveness from you. Therefore, tell me what you want me to do, for I am ready for all things. – O my God, may I always love you. Alas for me! How many years have I lost! But your Blood, and your promises, give me hope of making up for lost time, by loving you alone from now on, and by pleasing you. I love you, my Redeemer, I love you, my God, I aspire to nothing but to love you with all my heart, and to give my very life for your love, which made you willing to suffer death for my love. With the love of your love, I say to you, as did St. Francis, "I shall die, because you deigned to die for the love of my love." You, Jesus, have given me your very self; you have given your Blood, your life, all your sweats, all your merits; you have nothing more to give; I give myself entirely to you; I give you all my delights, all the delights of the world, my body, my soul, my will; I have nothing more to give; if I had more, I would give it to you. Most delightful Jesus, you are enough for me. – Yet, Lord, make me faithful to you; do not allow me, through a change of will, to abandon you. I hope, through the merits of your Passion, my Savior, that this will never happen to me. You said: "No one hoped in the Lord, and was confounded" (Ecclesiasticus 2:11). Therefore, with all confidence, I can say: "In thee, O Lord, have I hoped, let me never be confounded." I hope, O God of my soul, and I always want to hope that I will never see myself separated from you, suffering confusion.

[*Latin ed. p. 416*]

416 DECREE: In Thee, O Lord, have I hoped; I will not be confounded for ever. O my God, Thou art Almighty; sanctify me. Grant that I may love Thee much, grant that I may omit nothing which redounds to Thy glory, and may all things be such that they may please Thee. It is my beatitude, if I should lose all things, that I may find only Thee, and Thy love! For this end

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Thou hast given me life; grant that I may wholly dedicate it to works of Thy glory. I do not deserve Thy benefits, but punishments; therefore, I beseech Thee, that Thou mayest punish me as Thou wilt, provided that Thou dost not take away Thy grace from me. Without measure Thou hast loved me, O infinite Charity, O infinite Goodness; thus I love and will love Thee. O Will of God! Thou art my love. O Jesus, my own! Thou hast died for me; would that I also might die for Thee, and that by my death I might effect that all may love Thee. O infinite Goodness, and infinitely lovable! I make Thee the greatest, and I love Thee above all things. O Mary! Draw me to God; give me confidence in Thee, and grant that I may always flee to Thee; through Thy intercession, Thou must make me holy: thus I hope.

d) Indulgence of one hundred days for the recitation of the following prayer:

Prayer to the B. V. M.

O Mary, most holy Virgin and Mother, behold Thy most beloved Son, whom Thou didst conceive in Thy immaculate womb, didst give birth to, didst nurse, and didst embrace with the sweetest embraces. Behold, Him whose very sight delighted Thee, and with whose presence Thou wast filled with all delights; I humbly and lovingly present Him to Thee, that He may be held in Thy arms, loved by Thy heart, and offered to the most Holy Trinity for the highest worship, for Thy own honor and glory, and for my needs, and for the needs of all the world. I therefore beseech Thee, most pious Mother, to obtain for me forgiveness of all my sins, and abundant grace to serve Thee more faithfully henceforth, and finally, the grace to praise Thee with Him for all eternity. Amen.

The same humble supplicant also implores that any Priest who, for the space of one month, shall recite all and each of the aforementioned prayers, may obtain a Plenary Indulgence, once in the same month, on a day chosen at his discretion.

So granted, etc. His Holiness Pope Leo XIII, in an audience held on December 20, 1884, by the undersigned Secretary of the Sacred Congregation for Indulgences and Sacred Relics, graciously granted the grace in all things, according to the petitions. This is valid for ever, without any need for a Brief. Contrary things notwithstanding.

Given at Rome, from the Secretariat of the same Sacred Congregation, on December 20, 1884.

A. L. CARD. OREGLIA

A S. STEPHANO, Prefect.

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FRANCIS DELLA VOLPE, Secretary.

[*Latin ed. p. 417*]

417 Letters of His Holiness Pope Leo XIII to the Emperor of China; in which he implores that no harm come to Catholic missionaries as a result of the conflicts with the French nation. MOST EXCELLENT EMPEROR: The recent war in certain regions of Your Empire compels Us to strive, through Our studies and endeavors, to merit Your benevolence and clemency, so that no harm may, perchance, befall the Catholic religion as a result of these conflicts. In this, We perform the duty incumbent upon Us, since it is Our task to defend the Catholic faith everywhere on earth, as far as We can; and We follow the example of Our predecessors, who have not infrequently implored the powerful princes of Europe to protect the missionaries. Indeed, it gives Us great hope that, even at this time, there have been no lacking testimonies of Your favorable disposition towards Christians; for We have learned that, at the beginning of the war, a decree was issued by Your authority, forbidding any harm to be done to Christians, nor any injury to be inflicted upon the missionaries from the French nation. In this matter, no one can deny Your equity and humanity. Moreover, those priests who, from Europe, are present in Your flourishing Empire, for the cause of the Gospel, are sent by the Roman Pontiffs, from whom they receive all authority, duties, and instructions. And they are not chosen solely from one nation; many at this time are from Italy, from Belgium, from Holland, from Spain, from Germany, who cultivate the ten provinces of Your vast dominion. The priests, whether from the Society of Jesus, or from the Congregation of Missions, who labor in other provinces, are gathered from the most diverse nations. And this is entirely in accordance with the nature of the Christian religion, which, being born not for one people, but for all, joins all men together, without distinction of place or race, in a fraternal bond. And the works of those who labor in the Gospel are very beneficial to the public good. For, having been commanded to abstain from political affairs, they should devote themselves entirely to spreading and defending the wisdom of Jesus Christ. And these are the principal precepts of Christian doctrine: to fear God, and to observe justice in all things, inviolably; from which it follows that it is necessary to obey the magistrates, to obey the laws, Act. XVII, verse. 27.

[*Latin ed. p. 418*]

418 Letters [are] subject to laws; to honor the King is not only because of fear, but also because of conscience: for with what virtues is it more fitting to restrain and preserve the multitude in duty, and to maintain public safety? Truly, Catholic priests from Europe, who for many centuries now have diligently performed the apostolic office in the most powerful empire of China, have not only not caused any harm to the public authority and

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civil affairs, but, by unanimous consent, have brought about the greatest benefits: and they have certainly achieved this first by promoting Christian morals, and then by the propagation of letters and other arts, by which the humanity of nations is sustained. — Since the same purpose and the same intention are held by those who now instruct the Chinese in Christian institutions, there is no doubt that they themselves, with equal willingness and faith, will always obey the name and majesty of Your [Majesty]. Therefore, most powerful Emperor, we offer and express to You our most heartfelt thanks for the signs of benevolence shown towards them; and at the same time, we earnestly implore You, for the clemency which You demonstrate, to embrace them with Your kindness and to protect them with the firmest patronage, so that they may suffer no harm, and may freely enjoy the benefits of their ministry, without any offense, through Your favor. In the meantime, we beseech God of heaven and earth, that He may always prosper You, most illustrious Prince, with the richest gifts of His goodness. Given at Rome, near St. Peter, on the 1st day of February, 1885. In the 7th year of Our Pontificate. LEO XIII, POPE.

[*Latin ed. p. 419*]

From the Consistory Acts: Concerning the Consistory held on March 27, 1885. The Most Holy Father, after delivering a brief address, proposed the following sees:

The Metropolitan See of Hispalis, vacant due to the death of the Most Reverend and Illustrious Monsignor John Ignatius, Cardinal of the Holy Roman Church, formerly the Archbishop of that city, who died outside the Roman curia, with the favor of His Eminence and Lordship Zephirin, also of the Holy Roman Church, Cardinal Gonzalez and Diaz Tunon, of the Order of Preachers, and with the presentation of the Most Serene King of the Catholics.

The Metropolitan See of Toletum, vacant due to the translation of His Eminence and Lordship Zephirin, of the Holy Roman Church, Cardinal Gonzalez and Diaz Tunon, of the Order of Preachers, to the See of Toletum, with the favor of the Reverend Father Dominicus Benvenuti Monzón and Martin, Archbishop of Granada, and with the presentation of the Most Serene King of the Catholics.

The Metropolitan See of Granada, vacant due to the translation of the Reverend Father Dominicus Benvenuti Monzón and Martin to the See of Granada, with the favor of the Reverend Father Joseph Moreno and Mazon, Patriarch of the West Indies, and with the presentation of the Most Serene King of the Catholics.

The Metropolitan See of Granada, vacant due to the death of the Most Reverend and Illustrious Monsignor Alfred Duquesnay, the last Archbishop of that city, who died outside the Roman curia, with the favor of the Reverend Father Francis Edward Hasley, Archbishop of

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Havennia, and with the nomination of the most illustrious man, Julius Grevy, President of the French Republic.

The Titular Archiepiscopal See of Cameracensis, vacant due to the death of the Most Reverend and Illustrious Monsignor Dominicus Cavallini Spadoni, the last Archbishop of that city, who died outside the Roman curia, with the favor of the Reverend Father Conrad Cavriahi, Bishop Emeritus of Ceneda.

The Metropolitan See of Cameracensis, vacant due to the translation of the Reverend Father Francis Edward Hasley to the Metropolitan See of Cameracensis, with the favor of the Reverend Father Aloysius, Joseph, Mary, and Angel Vigne, Bishop of Digneâ□□Riezâ□□Sisteron, and with the nomination of the most illustrious man, Julius Grevy, President of the French Republic.

The Metropolitan See of Venionensis.

[*Latin ed. p. 420*]

420 FROM THE CONSISTORY ACTS: The archdiocese of Toledo is vacant, having been separated, and according to the Letters concerning the death of Most Reverend Alexander Balgy, Apostolic Vicar, who, after the death of that Archbishop, gave them to the Roman Curia on the ninth of September 1851. The Cathedral Church of LIMBURG is vacant, due to the death of Most Reverend Peter Joseph Blum, the last Bishop, who died outside the Roman Curia; favored by Most Reverend Christian Roos, a priest of the archdiocese of Limburg, by the Chapter and Canons of that Church, who elected or nominated him. He, born of legitimate, Catholic, and Christian parents in the town of the diocese of Limburg, Saint Clement's, and in the fifty-seventh year of his age, was instituted. Having served as a canon and secretary to the Bishop, he was a Vicar in his diocese and in the Cathedral Church. Appointed as a Professor in the Clerical Seminary and Rector, among the Examiners for moral theology, and numbered among them, and having renounced his position as a Canon in the Cathedral, he is favored by Most Reverend Marcelli Mazzanti, Bishop of Colle di Val d'Elsa. The Metropolitan Church of TARENTUM is vacant, due to the death of Most Reverend Joseph Rotundo, the last Archbishop, who died outside the Roman Curia; favored by Most Reverend Peter Alphonsi Iorio, Bishop of Lacedonia. The Cathedral Church of TIBURTINA is vacant, due to the resignation of Most Reverend Placido Petacci, who willingly submitted himself to the hands of the HOLY FATHER and was admitted by Him, with the effect of his resignation suspended until the possession of his successor. The Cathedral Churches of PISTOIA and PRATO are canonically united, and are vacant, due to the resignation of Most Reverend Donato Velluti Zati and the Dukes of Saint Clement. The titular church of the Bishop of CENEDA is vacant, due to the succession of Most Reverend Sigismund from the Comites Brandolini Rota to the See of Ceneda, favored by Most

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Reverend Donati Velluti-Zati and the Dukes of Saint Clement, Bishop of the suppressed dioceses of Pistoia and Prato.

[*Latin ed. p. 421*]

FROM THE ACTS: Until the session of his Successor, with the favor of the Most Reverend Father, Dom Celestine, titular Bishop of Imeriae. The CATHEDRAL CHURCH of SALO is vacant, due to the translation of the Most Reverend Father Narcissus Martinez y Zúñiga to the newly established Metropolitan See of Madrid, with the favor of the Most Reverend Father Thomas Cámara and Castro, of the Order of the Eremites of Saint Augustine, titular Bishop of Trajanopolis, for presentation to the Most Serene Catholic King. The CATHEDRAL CHURCH of CUNEEN is vacant, due to the death of the Very Reverend Andrea Formica, the last Bishop of that See, who died outside the Roman Curia, with the favor of the Most Reverend Father Theodore Ernesti Mariae, of the Counts of Valfrè di Bonzo, a priest of the Archdiocese of Turin. He was born the firstborn of legitimate, Catholic, and noble parents in the town of Caburri in the Archdiocese of Turin, and was constituted in the priesthood after more than thirty years of age. Having received the order of the priesthood, and having been awarded a doctorate in sacred theology, and previously in Canon Law at the Pontifical Roman Seminary, he was joined to the noble Academy of Ecclesiastical Studies in Rome, devoted to the affairs of the Congregation for extraordinary ecclesiastical affairs, and was numbered among the Domestic Prelates of His Holiness, and was chosen as an Apostolic Delegate to the Republic of Costa Rica. HISTORICAL NOTES: The CATHEDRAL CHURCH of COLLEN is vacant, due to the translation of the Most Reverend Father Marcellus Mazzanti to the united Sees of Pistoia and Prato, with the favor of the Most Reverend Father Aloysius Traversi, a priest of the Diocese of Arezzo. He was born of legitimate, Catholic, and honorable parents in the town called Bibbiena in the Diocese of Arezzo, and was constituted in the sixtieth year of his age, having sometimes served as a chaplain in his native place, and having performed the duties of Vice-Rector, Spiritual Director, and Master of Moral Theology and Ecclesiastical History at the Seminary of Arezzo. He was chosen as a Canon of Arezzo, and was added among the Examiners for the Curia's Pro-Synodal meetings, and until now he had renounced the office of Parish Priest of the place commonly called Socana in the same Diocese. The CATHEDRAL CHURCH of LAQUEDONIA is vacant, due to the translation of the Most Reverend Father Peter Alphonsus Jorio to the Metropolitan See of Taranto, with the favor of the Most Reverend Father John Baptist Maria Diamare, a priest of Naples, who previously served as Secretary to the Archbishop of Naples, and as Vice-Rector of the Seminary of Urban, and was chosen as Superior of the community of Recess and the gynaeceum now called after Saint Raphael, and was assigned to the Congregations for carrying out missions, and was numbered among the

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members for the literary and, especially, the Tiberina Academies.

[*Latin ed. p. 422*]

422 THE CATHEDRAL CHURCH of DIJON is vacant, due to the death of the Very Reverend Francis Victor Rivet, the last Bishop, who died outside the Roman Curia, by the favor of the Reverend Father John Peter Bernard Castillon, a priest of the Archdiocese of Toulouse, upon the nomination of the most illustrious Man, Julius Grevy, President of the French Republic. He, born of legitimate, Catholic, and honorable parents in the town commonly called Meroille, in the Archdiocese of Toulouse, having reached his seventy-seventh year, having served in several parish churches of the Archdiocese of Toulouse, and having previously been a Canon and Archpriest in the Metropolitan Church, has now renounced.

THE CATHEDRAL CHURCH of LINZ is vacant, due to the death of the Very Reverend Francis Joseph Rudigier, the last Bishop, who died outside the Roman Curia, by the favor of the Reverend Father Ernest Müller, a priest of the Diocese of Brünn, upon the nomination of His Imperial and Royal Majesty Francis Joseph I, Emperor of Austria, King of Bohemia and Apostolic King of Hungary. He, born of legitimate, Catholic, and honorable parents in the village commonly called Irritz, in the Diocese of Brünn, and having reached his sixty-third year, having previously been awarded a doctorate in sacred theology, having previously renounced his position as Canon of the Metropolitan Church of St. Stephen in Vienna, having been appointed Rector of the clerical seminary, and having served as a professor of moral theology at the University of Vienna, is now among the Prelates of His Holiness's household.

THE CATHEDRAL CHURCH of the Greek-Ruthenian Rite is vacant from its original erection, by the favor of the Reverend Father Julian Pelesz, a priest of the Diocese of Premisli, upon the nomination of His Imperial and Royal Majesty Francis Joseph I, Emperor of Austria, King of Bohemia and Apostolic King of Hungary. He, born of legitimate, Catholic, and honorable parents in the district commonly called Smerekowiec, in the Diocese of Premisli, and having surpassed his forty-second year, having previously been awarded a doctorate in sacred theology. He has previously renounced his positions as Counselor and Referent of the Metropolitan Consistory, as Pro-Synodal Examiner, and as Archdeacon and Dean of that Chapter.

THE CATHEDRAL CHURCH of AGENDEN is vacant, due to the translation of the Reverend Father John Fonteneau to the Metropolitan See of Albi, by the favor of the Reverend Father Charles Evariste Joseph Coeuret-Varin, a priest of Bordeaux, upon the nomination of the most illustrious

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Man, Julius.

[*Latin ed. p. 423*]

423 FROM THE CONSISTORIAL ACTS, by Grevy, President of the French Republic. He, born in Bordeaux of legitimate, Catholic, and honorable parents, having surpassed the forty-sixth year of his age, having served as a parochial Vicar in his native city for the Most Holy Virgin Mary, and having previously resigned as General Vicar in spiritual matters for the Agen diocese, has now resigned.

THE CATHEDRAL CHURCH OF CE-VACAN, vacant due to the death of the Very Reverend Hector Albert Chaulet d'Outremont, the last Bishop of that diocese, who died outside the Roman curia, is now presented by the Reverend William Joseph Labouré, a priest of the Atrebatensis diocese, at the nomination of the most illustrious man, Julius Grevy, President of the French Republic. He, born of legitimate, Catholic, and honorable parents in the place commonly called Achiet-le-Petit, in the Atrebatensis diocese, having reached the forty-fourth year of his age, having diligently performed the duties of the Superior of a small Atrebatensis seminary, has now resigned as General Vicar in spiritual matters of that diocese.

THE CATHEDRAL CHURCH OF VIR-DUNEN, vacant due to the death of the Very Reverend Augustine Hacquard, the last Bishop of that diocese, who died outside the Roman curia, is now presented by the Reverend John Francis Natalis Gonindard, a priest of the lugdunensis Archdiocesan, at the nomination of the most illustrious man, Julius Grevy, President of the French Republic. He, born of legitimate, Catholic, and honorable parents in the town commonly called P'err'eux, near the city commonly called Roanne, in the lugdunensis Archdiocese, having surpassed the forty-fifth year of his age, recently having received the sacred order of the priesthood, has shown little aptitude for performing ecclesiastical functions, and has now resigned as Director of the Institution called les Chartreux in Lugdunum.

THE CATHEDRAL CHURCH OF GU-A, in the Imae Telluris islands in America, is vacant due to the translation of the Reverend Father Francis Benjamin Joseph Blanger to the Lemovicensem see, and is presented by the Reverend Frederick Henry Oury, a priest of the Blesensis diocese, at the nomination of the most illustrious man, Julius Grevy, President of the French Republic. He, born of legitimate, Catholic, and honorable parents in the city commonly called Vendôme, in the Blesensis diocese, having reached the third year beyond forty of his age, recently having received the sacred order of the priesthood, has diligently applied himself to the performance of ecclesiastical duties. Having served as a Vicar in a parish of the Cenomanensis diocese, he has now resigned from the office of Chaplain of the French Navy.

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DALUPEN. THE CATHEDRAL CHURCH OF LE-

[*Latin ed. p. 424*]

424 FROM THE CONSISTORY ACTS: LU- CEN, vacant, through the translation of the Most Reverend Father Saturnino Fernandez de Castro to the Metropolitan See of Burgos, with the favor of the Most Reverend Father Francis Xavier Caminero and Muñoz, a priest of the Diocese of Palencia, for presentation to the Most Serene King. He was born of legitimate, Catholic, and honorable parents in the place commonly called Cervatos de la Cueza, in the Diocese of Palencia, and has reached the fifty-fifth year of his age; he has already received a doctorate in philosophy and sacred theology, and was once the Archpriest of the rural parish of Rioseco in his diocese, and is a member of the Royal Academy for Moral and Political Sciences.

LU- CEN CATHEDRAL, vacant, through the death of the Most Reverend Joseph de los Rios and Lamadrid, the last Bishop of that See, who died outside the Roman curia, with the favor of the Most Reverend Father Gregory Mary Aguirre and Garcia, of the Seraphic Order of Saint Francis, of the Diocese of Oviedo, for presentation to the Most Serene King. He was born of legitimate, Catholic, and honorable parents in the town called de la Pola de Gardon, in the Diocese of Oviedo, and has surpassed the fiftieth year of his age; he was admitted among the students of the Seraphic Order of Saint Francis, and attained the degrees of priesthood and academic standing within his religious order, and has devoted himself diligently to ecclesiastical functions, especially in preaching the Word of God, and has served as Rector, or Custos, in his Order.

The CATHEDRAL CHURCH of the "United States of Colombia" in South America, vacant, through the death of the Most Reverend Joseph Ignatius Montoya, the last Bishop of that See, who died outside the Roman curia, with the favor of the Most Reverend Father Bernard Herrera Restrepo, of the Order of Preachers of Bogota, or New Granada. He was born of legitimate, Catholic, and honorable parents in Bogota, and has reached the forty-first year of his age; he has already received a doctorate from the Roman University in sacred theology, and has been lecturing in the theological faculty of the archdiocesan seminary, and was Rector of the same seminary, and is currently a Canon of the Metropolitan Church, having resigned.

The CATHEDRAL CHURCH of PORTUS VETERIS in the Ecuadorean jurisdiction, vacant, through the voluntary and willing resignation of the Most Reverend Father Aloysius de Tola, which was carried out and accepted by the HOLY SEE, with the favor of the Most Reverend Father Peter Schumacher, of the Congregation of the Missions, a priest of the Archdiocesan Church of Cologne, for presentation, by virtue of an Apostolic Indult,

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to the most illustrious man of Aequa.

[*Latin ed. p. 425*]

FROM THE ACTS OF THE CONGREGATION. A certain one, born of legitimate, Catholic, and honorable parents in the place commonly called Kerpen, in the Archdiocese of Cologne, having surpassed the forty-seventh year of his age, and being numbered among the members of the Congregation of the Mission of St. Vincent de Paul, diligently applied himself to ecclesiastical duties, especially in the giving of sacred missions. He sometimes served as a chaplain in the city of Chile, and later, as a professor of sacred theology and canon law in the major seminary of Quito, he resigned from the office of Rector there. The CATHEDRAL CHURCH of Mexico City, in the Mexican Confederation, was vacant, due to the death of the Most Reverend Raymond Camacho, the last Bishop of that see, who died outside of Rome; the favor was granted by the Reverend Raphael Camacho, a priest of the Archdiocese of Guadalajara, who was born of legitimate, Catholic, and honorable parents in the town called Etzatlán, in the Archdiocese of Guadalajara, and having reached the fifty-ninth year of his age; he resigned from the office of Rector of the seminary, Prefect of schools, and as Governor, or Vicar General, of the archdiocese. In the metropolitan see of Guadalajara, he performed the canonical office of Penitentiary. QUERETARO [HISTORICALLY, THE 425TH CATHEDRAL CHURCH OF A BISHOP, under the Archbishop Damasceno], was vacant, due to the death of the Most Reverend Thomas Raymond Hyland, the last Bishop of that see, who died outside of Rome; the favor was granted by the Reverend John Nepomucene Zobl, a priest of the Diocese of Brixen. He was also appointed as an Auxiliary to the Most Reverend Simon Aichner, Bishop of Brixen. John Nepomucene Zobl was born of legitimate, Catholic, and honorable parents in the village commonly called Schattwald, in the Diocese of Brixen, and having surpassed the sixty-third year of his age, he was appointed as a professor of ecclesiastical history and Patrology in the Brixen clerical seminary, and as Prefect of studies. He also served as an Examiner pro-Synodal, Counselor, and President of the matrimonial court, and as an ecclesiastical Assessor, and as a counselor in that episcopal court, he resigned. He was previously a Canon of the Brixen Cathedral, and when that see was vacant, he served as Vicar Capitular, and most recently, he was elected as Vicar General for spiritual matters for the Vorarlberg province, and most recently, he was elevated to the dignity of Scholastic of the Brixen Chapter. The PAL CATHEDRAL CHURCH of JAREN, or St. Elizabeth, in the Philippine Islands, was vacant, due to the death of the Most Reverend Mariano Cuartero and Medina, the last Bishop of that see.

[*Latin ed. p. 426*]

FROM THE CONSISTORY ACTS 426: From the Roman curia, the de-

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ceased; through the death of the Reverend Father Francis Xafavore, Father Leandri Arruè, "Wierzchleyshi," the last of that order founded by Saint Nicholas of Tolentino, the Pro-Archpriest, deceased outside the Roman suburb, from the diocese of Tarazona, in the presence of the Reverend Father and of the Order of Eremites of Saint Severin, Morawski, titular canon of Saint Augustine, for the presentation of the Most Serene King Francis Joseph I, Emperor of Austria, King of Bohemia and Hungary.

THE CATHEDRAL CHURCH OF DIEN. Vacant, through the translation of the Reverend Father Aloysius Joseph Maria Angelus Vigne to the Metropolitan See of Avignon, in the presence of the Reverend Prior and Provincial, Father Francis Alfred Fleuri-Hot, priest of the diocese of Versailles, for the nomination of Monsieur Jules Grévy, President of the Gallic Republic. He, born of legitimate, Catholic, and honest parents in the city commonly called Saint Germain en Laye, in the diocese of Versailles, having completed his forty-eighth year, spent many years in the parish church, commonly called the Church of Versailles, of the same diocese, and until now, was the General Vicar for spiritual affairs of that diocese.

THE METROPOLITAN CHURCH OF LEOPOLIEN. Vacant. Through the translation of the Reverend Father Joseph Sembratowicz to the titular Archiepiscopal Church of Theodosia, in the presence of the Reverend Father Sylvester Sembratowicz, titular Bishop of Iulipolitan, for the nomination of the Most Serene Majesty Francis Joseph I, Emperor of Austria, King of Bohemia and Hungary.

THE METROPOLITAN CHURCH OF LEOPOLIEN. Of the Latin rite, vacant. By a Papal Bull, the ECCLESIA TITULARIS EPISCOPALIS OF AMATHEN, under the Patriarchate of Jerusalem, vacant, through the assignment of the title of Saint Anastasia, the following were conferred: to His Excellency and Lord Charles, Cardinal Lorenzo, and to the Reverend Father Francis Cassetta, Roman priest.

[*Latin ed. p. 427*]

From the Acts, born of legitimate, Catholic, and honorable parents in Rome, and having surpassed the third year beyond his fortieth year of age; Ordained a priest, and having previously received a doctorate in sacred theology, and in both Canon and Civil Law, a retired censor of the theological and liturgical academies, formerly the Pontifical House Prefect Urban, and then appointed by the sacred Congregation to promote the Christian name, and also constituted to examine reports and judicial proceedings.

The Archiepiscopal Titular Church of Pelusii, held by the Reverend Father Joseph Sadoc Alemani, formerly of the Church of Saint Francis in California.

The Archiepiscopal Titular Church of Tamiathen, held by the Reverend Father Eugenio Lâchât, of the Congregation of the Most Precious Blood,

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formerly of the Church of Basileen.

The Metropolitan Church of Corcyra, held by the Reverend Father Evangelistae Boni, of the Capuchin Minor Order, transferred from the Sees of Zacynthos and Cefalonia.

The Cathedral Church of Chien, held by the Reverend Father Fidelis Abbati, of the Reformed Minor Order, transferred from the titular Church of Gerrha.

The Episcopal Titular Church, held by the Reverend Father Moisi Ambervojan, of the Mechitarist Order of Vienna.

The Episcopal Titular Church, held by the Reverend Father John Baptist Sarthou, of the Congregation of the Mission, appointed as a Vicarious Apostolic in Tche-ly in China.

The Episcopal Titular Church of Myriophiten, held by the Reverend Father Peter Burgade, elected as a Vicarious Apostolic of Arizona.

The Episcopal Titular Church of Tamassii, held by the Reverend Father Alphonso Glorieux, elected as a Vicarious Apostolic of Idaho.

The Episcopal Titular Church of Tricomi, held by the Reverend Father Nicholas Mariae Pagani, of the Society of Jesus, appointed as a Vicarious Apostolic of Mangalore.

The Episcopal Titular Church, held by the Reverend Father Stephen Reville, of the Order of the Hermits of Saint Augustine, appointed as a coadjutor with future succession to the Bishop of Sandhurst.

The Episcopal Titular Church, held by the Reverend Father John Butt, appointed as an auxiliary to the Bishop of Southwark.

The Episcopal Titular Church, held by the Reverend Father Charles Testa, as general vicar of the Constantinople curia.

The Episcopal Titular Church, under the Archbishop of Boston, vacant, due to the death of the late Reverend Father Felix Ridel, the last Bishop thereof, who died outside the Roman curia, held by the Reverend Father Joseph Thomas deMazarrasa, a priest of the diocese of Santander. He was also appointed as the Apostolic administrator of the Collegiate Church of Civitatensis, commonly known as Ciudad Rodrigo, and united with the Cathedral of Salamanca.

Philippopolis.

[*Latin ed. p. 428*]

428 FROM 8, CONGREGATION OF THE COUNCIL OF ACIREALE. REGARDING LEGITIMATION. August 9, 1884. Through summary petitions. SUMMARY OF THE CASE. The Archbishop of Acireale reported to the Most Holy Congregation: that Peter Musmeci had entered into a clandestine marriage with a woman from his own Diocese; but that shortly thereafter, discord arose between them, and the man had petitioned the Episco-

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pal Curia for a declaration of the nullity of that marriage. In the meantime, however, the same man had entered into a civil union with a woman named Rosa Grasso, from whom he had a daughter; who, as an illegitimate child, was baptized. Subsequently, the Episcopal Curia rendered a judgment regarding the validity of the marriage. However, the life shared with the woman had obtained from the Apostolic See a dispensation regarding the impediment arising from adultery, stemming from a promise of a future marriage; but legitimation of the daughter, conceived before the death of the wife, was denied to them. Now, however, they earnestly request the legitimation of the daughter, since they are about to be joined in a legitimate marriage. The Archbishop commended the petitions. SYNOPTIC DISCUSSION. Furthermore, it is placed beyond all doubt that those born illegitimate can be restored to ecclesiastical society by the Supreme Pontiff, just as in civil society by the highest authority thereof: Chapter concerning those who are legitimate, 13. It was also examined the benevolence of the Holy See in granting such graces, as is evident from the tenor of the faculties, as testified by Reiffenstuel in title "Concerning those who are legitimate," number 55. PRAYERS ARE TO BE HEARD.

[*Latin ed. p. 429*]

IACIEN. 429 In this matter as well, a certain favor is usually granted, especially to Apostolic Legates; first, according to the established practice of the Sacred Tribunals, namely, the granting of legitimacy to children, previously procreated, within the same context of matrimonial dispensations; and then, finally, according to the established procedure of the Sacred Congregation, for legitimizing those born of marriage for admission to the sacred Orders and to ecclesiastical benefices. Numerous examples demonstrate this, but for the sake of brevity, only one and another from the most recent ones can be recalled. Thus, in Oratianopoli, on January 19, 1884, the Sacred Congregation granted this favor to a cleric born of parents who were married and then separated; likewise, in Zamora, on June 14, 1884, Joseph Ayuso, born of an adulterous and incestuous union, obtained the same favor, desiring to enter the clerical state. (1) Given these circumstances, it seems much easier for those making the request to obtain the benevolence of the Sacred Congregation. And especially when it concerns a girl who, by no right, can receive the Orders or obtain ecclesiastical benefices, the favor is limited solely to removing the stigma of illegitimacy, and consequently, the difficulties that are commonly encountered in the case of legitimization for the sacred Orders and ecclesiastical benefices disappear. If any difficulties should remain, they also seem to disappear because of the fact that a true and legitimate marriage existed between the parents of the aforementioned girl. For with this established, the requested legitimization becomes more equitable and reasonable, namely, by retroactively applying the legal effect of marriage to the time when the girl was born, just as is done by legal

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means when the parents, at the time of the illegitimate procreation, were capable of contracting marriage. Furthermore, the granting of the favor is supported by the good of the girl, who, otherwise, would unjustly have to bear the stigma of illegitimacy due to the fault of her parents; it is supported by the favorable opinion of the Bishop, which is always highly valued by the Sacred Congregation; and finally, it is supported by the benevolence of the Holy See, which... (1) Vol. Gratianopoli XVII, 203, quoted from Vol. XVI, 461, Zamora.

[*Latin ed. p. 430*]

430. IACIEN. The parents are already aware that, through the dispensation granted from impediments arising from crime and from the third degree of consanguinity, they are related. PRAYERS ARE REJECTED. However, the origin of the aforementioned girl seems so scandalous that the arguments presented above seem to avail little or nothing. For in this case, there is not only an incestuous and adulterous union, but moreover, this union has begun under the faith of a future marriage, indeed, and with the celebration of an act which is commonly called civil marriage. Furthermore, it is no secret that the Holy Church has always detested, and rightly so, the civil pseudo-marriage, which is permitted only with due precautions and conditions to avoid very grave evils; but even more detestable! is the fact that those who are joined in a legitimate marriage foster adulterous affections under the faith of a future marriage. Therefore, it is not surprising that the parents, together with the dispensation from the impediments of consanguinity and crime, have not been able to obtain the desired legitimization of the girl conceived and born in this union. And since nothing new has been added in the present petition, no reason seems to remain to depart from the prior denial of legitimization. With these things presupposed, the question was asked as to how the petitioners' prayers should be dismissed. RESOLUTION. The Sacred Congregation, having knowledge of the matter on August 9, 1884, decided to respond: The prayers were read (1). FLORENTINA. REGARDING THE REDUCTION OF A PENSION. August 9, 1884. SUMMARY OF THE FACTS. Although the priest Arrighetti was still of a flourishing age, and was the parish priest of Monteripaldi, nevertheless, due to the severity of the illness from which he suffered, in the year 1878... (1) That is to say, the prayers were read, but not granted.

[*Latin ed. p. 431*]

FLORENTINA, in the year 431, with the consent of the parish, relinquished the parish, requesting that the Apostolic See reserve for him a pension of 500 florins from the revenues of the parish. The Archbishop, commending his prayers, added that the revenues of that parish amounted to 2080 florins, fully realized and without uncertainty. Having heard this, the Holy Father granted the requested pension. For the vacant parish, the

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priest Benelli was elected, who diligently fulfilled the assigned duties for several years. Then, considering himself burdened, in the year 1882, he requested that the pension be reduced to a more equitable sum; and this all the more so because Arrighetti had already begun to recover, and was already receiving some income from the office he had recently accepted. In response to these requests, the Archbishop, after being consulted, replied: "The calculation of the revenues of said parish, amounting to 2080 florins, certainly seems excessive, and therefore it seems just to grant the priest Benelli's request for a reduction." Furthermore, he stated that the priest Arrighetti was to perform some service at the Convent of Nuns in that Diocese. Then, the permission to open the case was requested and obtained from the Most Holy Father, according to his own judgment, against the decree of May 27, 1878, so that the matter could be discussed in a full assembly.

(1) A summary of the arguments: Regarding the first doubt, the defender briefly explained that the pension had been granted by the Sacred Congregation of the Council, but that the right to open the case did not exist unless the accuser clearly demonstrated that the accused had truly concealed something, or had asserted something false, in matters that should have influenced the decision-maker's mind in one direction rather than another; – *Rota in Tiburtina iur. nominandi sup. aper. or. 8 Febr. 1830 §. 3 coram Bofondi; in Centumcellarum DEFENSIO PRESBYTERI ARRIGHETTI.*

(1) The advocates of the parties did not agree on the formulation of the doubts; the defender of Arrighetti, however, stubbornly insisted. Therefore, from his office, the parish priest Benelli urged the doubts that were raised regarding the reduction of the pension, and, as far as the pension itself was concerned, he initially requested the complete abolition of the pension.

[*Latin ed. p. 432*]

FLORENTINA, regarding the matter of the grant, opened on April 18, 1842, § 4, correspondence of Marini; in Rome, it opened on December 3, 1841, § 3, correspondence of De Silvestri, etc. – This, he stated, is of great importance in this case concerning the proof. For the plaintiff, Benelli, could present nothing other than what he himself asserted: and certain reports from experts, appended to parochial books, which he himself acquired. Arrighetti, on the contrary, relying on the presumption of the law, and on the validity of the rescript, and on the decree of the Florentine Curia, which examined and inspected everything before granting him the pension, maintained his position. With these premises, the plaintiff proceeded: not only the laws of the Church, but also the laws of humanity and charity, prohibit that a parish priest who has diligently and studiously fulfilled his office, should, if he suffers from ill health, be reduced to poverty. The Church wished to avert this misfortune, and therefore decreed: "That resignation

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shall not be admitted, unless it is established that he can live comfortably from elsewhere; and otherwise, the resignation is null and void." (Council of Trent, Session 21, Chapter II, on Reforms). That is to say, a parish priest who, prompted by necessity, resigns his benefice, or who is appointed to another parish, or at least obtains a benefice of equivalent value. (Pius V, in the constitution *Quanta Ecclesia*; Paris, on resignation of benefices, book 6, question 2, § 1, 2; Sacred Congregation of the Council, in Lanciano, February 9, 1726). This has always been taught by the Doctors, and has been confirmed in judgments, by the Sacred Congregation, among others, in the case of the parish priest of Herbipolis, December 22, 1860, etc. Therefore, such a pension succeeds in place of the benefice (Paris, on resignation of benefices, book 6, question 2, number 12). Furthermore, he who succeeds the parish priest after such an assignment and receives a benefice burdened with a pension, must entirely pay the pension, because acceptance is equivalent to a contract. However, the parish priest Benelli opposed two points: 1. that the pension was granted only if the revenues of the Church could bear it, and that today, he claimed, they cannot bear it. 2. that the parish priest Arrighetti lost his right to the pension, because this...

[*Latin ed. p. 433*]

FLORENTINA was assessed at 433 scudi – until otherwise provided – and today, provision is made accordingly. And concerning the revenues of the church, the parish priest Benelli stated that they did not exceed 1109 scudi. To ascertain this, he consulted a certain expert, who reported that the parish property barely yielded a revenue of 540 scudi, and that the total revenues barely reached 1109 scudi. Soon after, however, the parish priest presented a new summary, drawn up by his own hand, of the income and expenses. In this, he stated that the expenses amounted to 1284 scudi, and that the parish was completely lacking in certain revenues; therefore, after deducting the expenses, the revenues were barely calculated at 943 scudi. Here, it must be noted that Benelli was not permitted to contradict the judgment of the expert he himself had chosen. But if credence were to be given to this expert, the parish priest Benelli would have to pay the full pension, because – if the parish income exceeds one hundred ducats – the pension is usually set at the amount exceeding that sum – *Parisii, loc. cit., no. 24*. For, having paid the pension, he would still have 609 scudi, or one hundred and fifty ducats, remaining to him. But even the expert cannot be trusted, for the Archbishop himself, who recently judged that a reduction of the pension should be made, stated that the sum of revenues presented by the parish priest's expert was exaggerated. Regarding the uncertain revenues, it was noted that the very Archbishop falsely accused Benelli; for, as it appears from the parochial records, she received two hundred scudi each year. Therefore, it is clear that Benelli falsely asserted the revenues of the Church, just as he falsely asserted the expenses, which he claimed

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amounted to 1284 scudi each year. And he also added that there were many expenses of restoration that are now required. Perhaps this could have been said by the orator Arrighetti when he was appointed to manage the parish. For he completed many restorations, purchased sacred furnishings, and handed over all the goods and covered vestments to his successor, the parish priest. *From the Acts, Vol. XVII, fol. COI, 2S*.

[*Latin ed. p. 434*]

434 FLORENTINA. Wherefore, it appears quite improbable that so many and such great expenses have been incurred today. Furthermore, it is also evident that the revenues of the Church have been diminished through negligent management of its assets. But, in the first place, it is certainly impossible that they have been diminished to the extent that 1131 *libellae* are now lacking. Moreover, if the parish priest Benelli has mismanaged the affairs of the parish, let him bear the blame: for it would not be just to impose the burden of his fault upon an innocent person. Furthermore, it cannot be presumed that the Florentine Curia granted the parish priest a pension without consultation: on the contrary, it is evident from its own decree that it carefully examined all matters, viewed the parish books, and ascertained the revenues and expenses. It is incumbent upon the parish priest Benelli to demonstrate that these things are false, before requesting a reduction: for to assert things that are not proven, or to display skills that are not suitable for the occasion, is nothing other than to profess a desire for profit, and not the truth. Furthermore, the speaker proceeded, saying: Benelli recalls that the pension is to be paid until otherwise provided for regarding the pension. But now, since this Capella *num* of the nuns is maintained, and he enjoys a pension which the secular government pays him on account of the benefice of St. Clement, therefore, the pension concerning which there is a dispute is no longer to be paid. To this objection, the speaker Arrighetti responded that the nuns provide him with nothing other than lodging and such sustenance as is not suitable for his health. They provide no salary whatsoever, not even that which is customarily granted in the form of alms for the celebration of Masses. Regarding the benefice of St. Clement, which has been suppressed by the government, he stated that, after deducting the expenses of the Masses, only 23 *libellae* remain for the rector. Therefore, although he has thus far argued as if he truly deserved the benefice, in reality he does not enjoy it. For the revenues, which were previously greater, were reduced to 138 *libellae* in the year 1870. But shortly thereafter, the government denied the payment. Only recently, that is, this year, was the pension restored to him, but in name only, not in reality, because to this day not a single *libella* has been paid

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to the parish priest.

[*Latin ed. p. 435*]

FLORENTINA 435. Haec omnia ad justitiam pertinent. Sed aequitas etiam et caritas attendi debent. Parochus Benelli suscepit paroeciam regendam ab initio, cum emolumentis et oneribus quae invenit, quae percepit et percipit. Hodie vero emolumentis frui, onera dimittere vellet. Orator contra vitam suam ecclesiae dedicavit: paroeciam in meliorem statum adduxit, instauravit ac sacra supellectili ditavit. Quae omnia in pretio profecto habenda sunt. Ac frustra obiiciit de reductione tantum disputari. Pensio enim 500 libellas attingit, quae ad praecipuas vitae necessitates aegre sufficiunt. Tametsi longe alia mens Ecclesiae fuit, quae statuit aegrotanti parocho pensionem vel beneficium esse tribuendum aequivalentis valoris. S. C. Concilii in Herbipoli, parochialis 22 Decembris 1860; in Limburgen., permutationis paroeciae 27 Iunii et 19 Decembris 1857, etc. DEFENSIO PAROCHI BENELLI. Paucis praemissis, advocatus, ait, rescriptum diei 27 Maii 1878 esse subreptitium et obreptitium; quia Ordinarius retulit summo Pontifici paroeciam habere libellas 2080 praeter incerta emolumenta, quod omnino falsum est. Et re quidem vera, iuxta depositionem parochi Benelli, introitus paroeciae Monteripaldi confeceret summam lib. 2218; exitus conscenderit ad summam lib. 1284; unde nil aliud parocho reliquum foret quam lib. 943, ex quibus, si pensio detrahenda esset, residuae non haberentur nisi lib. 443. Ad eamdem conclusionem esset deveniendum si consulatur supputatio rationum quam Peritus a Curia deputatus sub iuramenti fide confecit. Siquidem, iuxta ipsum, praedium, quod est pars praecipua bonorum immobilium paroeciae Monteripaldi, daret annuas libellas 807; quae rediguntur ad 512, detractis oneribus. Cui summae si cumulentur,

(1) Doluit praeprimis orator de modo, primam instantiam, licebat quaestionem quo alterum dubium ex officio concinna- agere tum fuerit. Nam, quam de eiusdem reductione. Litis con- variare licet ait ille, supplicem ampliare et libellum ante litis contestationem : et ideo ampliando de cessatione pensionis potius testatio fit quando advocati conveniunt coram Auditore ad efformanda dubia.

[*Latin ed. p. 436*]

436 From Florence, the revenues derived from public taxes, from the exemption of a certain annual payment from the Florentine municipality, and from a certain mountain property, after deducting only the tax on movable property, would amount to a total of 2079 florins. However, according to the same expert, these revenues would be burdened by several expenses, which would amount to 969 florins, leaving a net revenue of 1109 florins. But, the aforementioned expert, cited by the Patron, noted that certain payments were not included in this sum, from which a sum of

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396 florins would be formed, still to be deducted from the parish revenues. Considering all of this, the Patron observed three opinions: 1. The opposing party, who stated that all revenues, even after deducting the pension, amounted to 1472 florins; 2. The parish priests of Benelli, who affirmed that the net revenues amounted to only 443 florins; 3. And the expert, who determined that the net revenues were 1109 florins, and if 396 florins were still to be deducted, due to certain emoluments and distributions, the revenues would then decrease to 713 florins. Furthermore, this calculation, having been made by an expert, judicially and by order of the Supreme Court, and moreover under oath, and also being a mean between the two opposing parties, deserves the greatest credibility. Indeed, according to Fierlio, in the theory of Saliceti in Book 1, Section 2 of the Code on the rescission of sales, it is "irrevocable," and no room is given to the expert unless he presents, or it can be presented, a "clear and evident injustice, or at least a strong suspicion of injustice." Furthermore, if the net revenues of the parish of Monteripaldi are to be considered as 713 florins, then it is clearly false what was reported to the Holy See in the year 1878; for they were then, in truth, increased; and therefore, those prayers for the remission of taxes should be corrected. But also, the remission itself. The Patron observed that the Holy Father, Pope Pius VI, in the concordat of the year 1775 with Leopold, Grand Duke of Tuscany, had agreed, with only two exceptions, not to impose any pensions on the parishes of the Duchy. And the Patron adds, it is not known...

[*Latin ed. p. 437*]

FLORENTINA, at least, these Apostolic letters have been recalled. But at that time, in order that pensions may be validly imposed, and in order to avoid fraud, two things were necessary, namely, that mention be made, either in the petition or in the Pontifical Rescript, of the Concordat of the year 1775. However, the parish priest Arrighetti and the Florentine Prelate were entirely silent on this matter in their petitions. Indeed, the Pontifical Rescript does not mention this matter either. Therefore, as the advocate says, the fraud is clearer than the midday sun. It is not pleasing to consider that the Holy Father was unaware of the existence of the Concordat; and yet, He wished to derogate from it: for, as Reiffenstuel states in the rescript, no. 200, "any 'rescript' which grants a favor or is granted in order to obtain benefits contrary to 'any custom or particular statute of any Church, or place' is not valid, unless mention of the same is made, at least, 'by a general derogatory clause, etc.'" The advocate, proceeding to another point, endeavored to demonstrate that the parish priest Arrighetti was amply provided for. He receives annual stipends of 158 florins from the chaplaincy of St. Clement, which he has consistently received since the time he left the Rauch. He has sustenance and lodging with certain nuns called of the Holy Spirit. He provides his services to the parish priest in the place where he

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resides, from whom he will obtain some emolument, at least 300 florins annually, according to the Piana tariff, besides the daily Mass, from which he will receive some assistance. On this matter, the advocate concluded, it is necessary to state that the pension established in favor of the parish priest Arrighetti should either be abolished, or at least reduced to a more equitable sum. For it was established with the clause that it should continue until the parish priest Arrighetti was otherwise provided for. Finally, the advocate maintained that the parish could not bear a pension of 500 florins; for the pension must be moderate, especially in the case of parishes; as Schmalzgrueber states in book 3, Decret, title 12, no. 3. Indeed, according to the opinion of the same Schmalzgrueber, cited in the same place, a pension should not exceed one-third of the revenues; otherwise, if it exceeds, it will not be considered just; and a pension of 500 florins imposed would be considered unjust.

[*Latin ed. p. 438*]

438 In Florentina, concerning the parish of Monteripaldi, which, according to expert calculations, has a net income of only 713 livres. But furthermore, it must be remembered, says the patron, that parochial benefices, according to the Council of Trent, cannot be burdened with pensions unless at least 100 scudi are reserved for the parish priest. Since this is the case, and since today, contrary to what happened during the time of the Council of Trent, 100 scudi are scarcely sufficient for the honest sustenance of a parish priest, because the value of money has diminished due to the increase in prices; it now appears that the aforementioned sum of 713 livres must be left free to the parish priest of Monteripaldi. To this, it is objected that the sum of 713 livres is not a certain calculation. The patron responds, citing Schmalzgrueber, already mentioned, n. 17: "A pension imposed on uncertain revenues is not considered valid, unless it is explicitly stated." Therefore, it follows that either the pension must be abolished, or reduced to 71 livres. For this amount, according to the patron, would constitute one-third of the free revenues from the total sum of 713 livres; taking into account that 100 scudi must be deducted from this sum. With these and other considerations noted, the following questions were proposed for clarification: I. Does the principle of proportionality apply in this case? II. If so, how should the pension be adjusted in this case? RESOLUTION. After examining the matter, the Sacred Congregation decided to respond as follows: - To I, No. - To II, Yes, in proportion to the actual revenues of the benefice, those actually received by the beneficiary. FROM WHICH WE CAN GATHER: I. Pensions, especially concerning parishes, both according to the Tridentine decrees and the Decree *Cum nuperrimis*, must be imposed in such a way that at least 100 scudi remain reserved for the parish priest. II. According to canonists, if a pension exceeds one-third of

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the revenues, it is not considered just.

[*Latin ed. p. 439*]

FLORENCE, 439, III. Regarding the allowance for books, it appears that this amount exceeds the established limits; therefore, it was deemed necessary to reduce it proportionally to the actual income received by the parish priest from the parish, according to an expert assessment made under oath (1).

MONTISALTI, REGARDING NOTHING EXCEEDING OR FALLING SHORT OF THE OPENING OF THE MATTER.

September 6, 1884.

SUMMARY OF THE CASE.

The Bishop, desiring to promote the good of souls, petitioned the Apostolic See to appoint an auxiliary priest to the infirm Archpriest, without hope of recovery, with the right of succession. And he designated a priest, Anthony, who had been acting as the vicar for several months; and he requested that he be appointed without further deliberation, after a private examination, and with an allowance of 500 livres from the income of the benefice.

His Holiness, in an audience on February 11, 1884, "graciously granted the Bishop's request, according to what was asked, by Apostolic Letters under the seal, etc."

However, while the Apostolic Chancery was delaying the issuance of the Bull, several accusations were brought before the Sacred Congregation of the Holy Office against the priest Anthony, in which he was declared unworthy of the parish, both in terms of knowledge, character, and conduct of life; and yet, it was said that the Curia was favorable to him.

Then, a certain Prelate was entrusted with a confidential mandate to gather the most accurate information about the life and morals of the aforementioned priest; and when a response favorable to the priest was soon received, it seemed that any difficulty had been resolved.

But this was not the case, because on May 12, a certain advocate of the Roman Curia, whose mandate is not evident from the records, alleged a letter from the Vicar General of Bologna in which the priest Anthony was accused of scandalous acts (1).

[*Latin ed. p. 440*]

440. MONTISALTI did not hesitate to bring a case before the Apostolic Chancery concerning the provision of a Coadjutor. (1) Having been informed of this matter by His Eminence, on June 23rd, he was deemed worthy to refer the question for judgment "with all necessary and appropriate powers, and with the clause regarding the opening of proceedings, against

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the decree of February 11, 1884." Synopsis of the Case. WHAT IS AGAINST FATHER ANTONY. Both with regard to morals and with regard to knowledge, such things were reported that, if taken literally, one would certainly not hesitate to conclude that Father Antony is unworthy of the pastoral ministry. Indeed, when choosing those for dignities and ecclesiastical offices, sufficient knowledge is required, measured according to the nature of the office and the benefit; Fagnanus in c. Cum in cunctis, no. 144; Garcias, part. 7, De benefic., c. 7, no. 43; Engel, tit. De aetat. et qualit. praef.; especially the Constitution of Alexander III in the Lateran Palace, which begins "Quia nonnulli," and another of Gregory X in the Council of Lyons, which begins "Licet canon," both renewed and confirmed in chapter 3, session 7, concerning the reform of the Council of Trent. And since it is the duty of pastors to preach, to explain sacred words and salutary warnings, to teach children the rudiments of the faith – session 5, concerning the reform, chapter 2; and session 24, concerning the reform, chapter 4 – and also to explain the power and use of the Sacraments, and to administer them to their faithful – session 23, concerning the reform, chapter 1 – it cannot be considered that one is capable or worthy of such a sublime ministry who is so lacking in intelligence, that he is ignorant of even moral science, as is asserted to be the case with Father Antony, according to the testimonies presented. This concerns doctrine; but worse things are reported concerning morals: (1) It should be known that this priest successively served in the pastoral ministry as a chaplain in several parishes, with the permission of his bishop, in the Diocese of Bononiensis. Accused of a shameful scandal, he was appointed as a substitute for the infirm Archpriest in the Diocese of Adriensem, where he provided auxiliary services. He then presented himself, with his own revocation.

[*Latin ed. p. 441*]

In MONTÏSALTI, 441 instances have been alleged by numerous witnesses. But, more brazenly, and yet with greater certainty, is the crime of scandal imputed to him in the year 1871; nor less, it has been proven by the testimonies of four witnesses. Therefore, it seems impossible to doubt either the existence of the scandal, or its author. Indeed, two suitable and concordant witnesses always give full and complete testimony in court, except in an exceptional case, which is not verified in this matter. See *DD. ad tit. de test*, and attention 31, L. 2 *Decret*. It must further be observed that, not only for each testimony, namely of the crime and of the thing, are two concordant witnesses required; but also that all the testimonies must support each other; in which case the testimonies are said to be cumulative or corroborative, and thus gain greater authority, as Vecchiotti states, volume 2, chapter III, § 39. However, the Priest Anthony, having departed from the diocese of Bononiensi and having entered the diocese of Adriensem, did not act rightly, if we are to believe the letter of the Vicar

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General of Adriensem, given to the Canon M. on April 24, 1884, and finally transmitted to the Sacred Congregation. Furthermore, he does not seem to have led a better life in the diocese of Montisalti, where also there are reports of shameful crimes, or at least he committed them before leaving for Bologna, or later, during some temporary return. Therefore, from all these things, one might conclude that the Priest Anthony was corrupt in his morals, indeed, and what is worse, that he also acquired a habit of wrongdoing, since, without amendment, for many years, until now, he is said to have left everywhere examples of shameful conduct. Truly, considering these things coherently, everyone can easily understand what conclusion must be drawn. For it is necessary that a shepherd of souls be without crime, irreproachable, and have a good reputation from those who are outside, so that he may not be a cause of reproach, according to the words of the Apostle. And the Church has always diligently striven to provide the flock with holy pastors, as countless laws promulgated by it for this purpose testify, namely, title 5, 11, 12, and 14, book 1, *Decret*, and *DD. ibi*, and especially the law concerning the concurrence for parishes.

[*Latin ed. p. 442*]

442 MONTISALTI established these regulations, and with diligent vigilance, consistently ensured that those lacking in knowledge or morals were not appointed to positions of authority, nor entrusted with pastoral duties. Indeed, the rule transmitted by Gregory X in the Council of Lyons, in the decree "Licet canon," should be considered a guiding principle: "No one shall be admitted to the governance of a parish church unless he is suitable in morals, knowledge, and age." This rule was further expanded by the Council of Trent in session VII, chapter 3, with the addition: "Otherwise, any appointment or provision shall be declared invalid." Therefore, it would seem that there is no reason to object to the appointment of the priest Anthony. Furthermore, it cannot reasonably be denied that a decree from the Holy See intervened in this matter. For it is a certain and well-known principle of law that, when something is omitted or concealed, the Supreme Prince would either not have granted the decree at all, or would have granted it with much greater difficulty, as stated in chapters 19 and 20 of "De Rescriptis" by Gonzalez. In this regard, the Sacred Roman Rota, in the case of Terracina, or Sezze, on January 12, 1819, before Odescalchi, § 3, ruled that it does not matter if someone has falsely insinuated or concealed the truth out of ignorance or fraud. The Sacred Rota, in decision 496, numbers 2 and 3, before Riminaldo, has ruled that it is sufficient if the concealment or deception affects the substantial or motivating reason for the decree, as the Doctors state in the cited passage under the title "De rescriptis." In this case, it was insinuated that the priest Anthony was worthy of the parish, while, according to the alleged testimonies, this appears to be false. And this false insinuation falls upon the substantial or motivating reason for

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the decree, as is easily apparent. Therefore, it seems that there is nothing to prevent the decision of the court from being accepted against the decree of the Holy See of February 11, 1884, and consequently, the appointment of the aforementioned priest may be declared invalid.

WHAT SUPPORTS THE PRIEST ANTHONY: On the other hand, there are documents that commend the life, morals, and doctrine of this priest, such that the testimonies presented against him are almost completely refuted and lack any authority.

[*Latin ed. p. 443*]

MONTISALTI 443 appears to be lacking. For if we speak of knowledge, the Ordinary of Montisalti testifies that this priest completed the course of dogmatic and moral theology with distinction; and furthermore, the testimonies of professors, which exist in the archives, and which have been presented whenever this priest was promoted to the sacred orders, attest to this. Indeed, in such examinations, he always obtained a large number of votes. Moreover, the Rector of the Seminary, with generous words, commended this priest to the Vicario capitulare of Bologna, saying that he had made sufficient progress when engaged in the study of moral and dogmatic theology, and that he had been a man of the best morals and an example to others. Meanwhile, it is also worth noting that the priest Anthony appears to have been versed in other disciplines as well: and thus, for several years, he performed the duties of a *cooperator* in the Cathedral of Montisalti, and later taught Latin grammar in the Seminary of the town of Cento. And it should be observed that he accepted the teaching position not secretly or at his own whim, but after a prior examination, and because he was called by the Ordinary of Bologna. Given these circumstances, any contradictory testimonies would seem to be of little importance. For if someone examined him once and found him to be insufficient, as has been reported, this is asserted about an action, but it does not prove anything about his character or capacity. But if some people held him in contempt, then, according to what has been said by many, he was, on the contrary, held in high esteem, the testimony of whom seems to be highly preferable, because it is universal, it is based on facts, and it is not suspect, as might be the testimony of adversaries, as will be said later. As for his life and morals, three things seem to have contributed to his good reputation: 1. accusations which appear to be long past; 2. which seem more like calumnies than truths; 3. and, whatever the truth may be, he has led a commendable and blameless life for many years. Furthermore, the first point seems easily to be refuted. Indeed, the crime of scandal committed in the town of Cento occurred before the year 1871. An attempt at seduction towards a girl named

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L. was...

[*Latin ed. p. 444*]

444. MONTISALTI had been present, according to various testimonies, either 8, or 10, or even 15 years prior. He had attempted to approach Euphrasia approximately ten years before. The relationship with Di Stefano, who was a vile woman, if indeed it is true, must be of long standing, since this woman had already been visiting Fermo for a long time. Furthermore, justice itself dictates that the priest Anthony should not be punished for these sins committed so long ago, especially considering that he has genuinely repented of them and made amends: for, as stated in canon law, "in this, one must not disregard what was, because he is now beginning to be what he was not" (Ferrus, Dist. 50). And the punishment would be the removal from the enjoyment of the benefice, according to Gratian in Dist. 4, c. 25, n. 1: "The canonical penalty is... that which prohibits or prevents the punishment from being inflicted by any ecclesiastical degree, which otherwise would be permissible." Moreover, the canons which command that the unworthy be kept away from parishes and offices have never included those who, having once sinned, have subsequently, and for many years, demonstrated sufficient evidence of conversion – understand, of course, unless they have incurred infamy or the like; which, in this case, is certainly not the situation (Ferraris, v. electio, § 3, throughout). But furthermore, these very accusations appear to be calumnious against the priest, as if he had been expelled, by recalling each accusation with its details and the testimonies presented. Moreover, there were animosities between some of the witnesses and the priest Anthony; hence, the depositions made against him are already suspect. Indeed, in criminal cases, any enmity, even a slight one, disqualifies a witness "lest he wish to do harm out of anger, or lest he wish to avenge himself," as it is written in canon law, Accusatores et testes, q. 5, c. 3. Or, as Farinacus states in q. 53, n. 53, tit. VII, de testib., and with him, the Doctors in common, "the witness's credibility is diminished to the extent that the quality of the enmity allows." It has also been noted that some witnesses were found to be lying: for example, they stated, among other things, that Anthony had abandoned his parish duties with the approval of the people, when he became a master. But the contrary is proven by the testimony of the parish priest.

[*Latin ed. p. 445*]

At Montisalto, number 445, it was asserted that the priest had led a blameless life, as befits a priest; so that he left no desire for anything in all his dealings, having diligently administered the sacraments to the parishioners, and having continued to minister even when occasionally returning from the neighboring city where he taught grammar. And the parish priest of Stienta died on the fifth day of June, 1884. Now, since

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those who accused the priest Anthony appear to have lied at times to his detriment, it arises that he who is convicted of lying is no longer heard, according to I. John 21:2. Furthermore, concerning the shameful acts, of which he was accused, it was observed by the priest M. that the accuser himself could be considered suspect. For, setting aside the fact that, according to the Bishop, his life was not very commendable, it should be remembered that he had been removed from the office of Archpriest, and the accuser had been appointed in his place, to the great displeasure of the former; for he loved and desired to preserve for himself the honor and the goods of the benefice, hoping for succession. Therefore, he was naturally inclined to be thoroughly opposed to this priest. Furthermore, from the very process, drawn up in the Curia of Montisalto concerning this matter, it seemed abundantly clear that the accusations were made with a spirit of calumny, rather than with a love of truth and justice. Indeed, if one were to generally inquire how the accuser acknowledged these crimes, and by what impulse he brought them forth, he answered under oath that he knew everything from the Primicerius [a high-ranking cleric] and referred the proof to him. Concerning other shameful acts, such were the testimonies, that there was a contradiction of witnesses concerning the same act, or a repugnance in their words, namely, the singularity of the witnesses is an obstacle! Such a thing does not prove anything, as taught by Daniel 13:1 and following, and as Reiffenstuel states in L. 2 Decret, title 20, § IX. Therefore, the accusation seemed to be on the subject of calumny; for he who accuses another of a crime which he cannot prove, is presumed to be a calumniator, title De calumniat. c. 2; for he who wishes to denounce another, must have prepared proofs, L.

[*Latin ed. p. 446*]

446 MONTISALTI: Concerning the accusation against him: Hence, if there is a deficiency in the proof, he is considered to have initiated a lawsuit falsely, deceitfully, and thus slanderously. *Glossa in cit. cap. Tertio*. Finally, even if the truth is not known, whether the aforementioned crimes were committed by the priest Anthony, this point of contention could even be omitted; at least it seems certain that this priest, for many years, has given evidence of an undoubtedly virtuous life, as testified by the testimonies of many trustworthy individuals. For the Syndics of various places in which Anthony served as pastor, and all the pastors, have spoken in the highest terms about the commendable way of life and the honest morals of this priest. Regarding the testimonies of the Vicar General of Atri and the pastor of Fortini, it has been noted that they were presented by the canon M. and the priest L., adversaries of the priest Anthony. And therefore, the documents presented by them are suspect: *tit. de fide instr. 22 Hh. 2*. Thus, it seems that sufficient evidence has already been presented regarding the virtuous life that Anthony has

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led for many years; but the matter seems to be further strengthened not only by the judgment of the Ordinary of Montisalti, who has consistently considered Anthony worthy; not only by the favorable vote of the Chapter, given at a time not suspected, namely on July 5, 1883; but precisely by the testimony of that prelate to whom the investigation into the life of this priest was entrusted by the Sacred Congregation. Since these things are so, namely, that according to what has been said above, Anthony seems to possess sufficient knowledge; and furthermore, that he has led a life approved by all for many years, as evidenced by the testimonies presented; and finally, that, referring to the time before, neither shame nor, especially, any habit of wrongdoing is imputed to him, it is certainly not the case that he should be declared unworthy of the parish. And therefore, there seems to be no reason to grant an audience to hear arguments against the Rescript of February 11, 1884, in which he was called to the position of coadjutor and successor to the benefice. It is said that this is contrary to the decree of the Holy Father.

[*Latin ed. p. 447*]

MONTISALTI 447: It cannot be permitted to complain and to request the opening of proceedings unless for a very important reason – Rota decis. 471 n. 6 p. 1 Recent. – and unless it is established that the matter is tainted by some flaw, and that it suffers from the defect of deception or fraud, and this must be proven most clearly – Card. De Luca, De iurisd. discept. S, no. 6; Rota coram Crescentio decis. 1 i no. 5, etc. – and this, both so that timely objection may be made to the calumnies of the litigants, and because the Prince ought not to grant access to a lawsuit which he knows to be unjust – De Luca, De iudiciis disc. 20, n. 12 et 14 – and even more strongly in matters of election, because, if the judgment of civil law is to be followed, it is like sacrilege to consider someone to be unfit for whom the Prince has written in favor – L. Disputare C. de crimine sacrilegii. Indeed, in the matter concerning the request for the opening of proceedings, the sole allegation would be the indignity of the priest Anthony; but since this does not appear to have been disproven, and rather the contrary seems to be the case, it does not seem that this request should be granted. With these things noted, the following propositions were to be examined. Doubts. I. Whether there is grounds for the opening of proceedings in this case. And to the extent that it is affirmative, II. How provision should be made in this case. RESOLUTION. The Sacred Congregation, having knowledge of the matter on the day of September 6, 1884, decided to respond: – To 1: Negatively, and furthermore. To 11: Provision is made in the first. FROM WHICH IT IS UNDERSTOOD. I. That in order to be permitted to complain and to obtain the opening of proceedings against the decrees of the Roman Pontiff, it must be clearly demonstrated that those decrees are tainted by the defect of deception or fraud. (1) II. That against the rescript of the Roman

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Pontiff in the matter in which the priest Anthony is called to be a coadjutor with future succession to the benefice, there is no reason for the opening of proceedings, because there was a lack of legal proof of the indignity of that same priest. (1) See Recole Vol. X l, 178 and Vol. XVI, 391.

[*Latin ed. p. 448*]

448. MONTISALTI. III. Apertio oris debet recte denegari, non propter praeviam obrepṭionem aut subreptionem, ut calumniis litigantium tempestive possint contradici, et ut aditus praecludatur litigi, quae iniusta cognoscitur. IV. Dignitas sacerdotum, quoad beneficia curata, maxime pendet ab scientia, honestate vitae, et idoneitate eorumdem, relative ad determinatas paroecias quibus praeficiendi sunt. V. Dignitas sacerdotis in themate, tum quoad scientiam et morum honestatem, tum quoad idoneitatem relative ad paroeciam, ad quam electus est, multum testatur testimonio plurimorum, et praecipue iudicio Ordinarii qui eumdem elegit, et tandem rescripto R. Pontificis. VI. Depositiones testium adversariorum minime faciendas esse, utpote suspectas; etenim quaelibet inimicitia testem repellit, ne iratus nocere cupiat, vel laesus se ulcisci velit. VII. Criminationes in themate potius videntur calumniae; ex quo defuit omnino probatio formalis; et partae videantur ab inimicis sacerdotis Antonii. GUAST ALLEN. INTERPRETATIO VOLUNTATIS. Die 13 Septembris 1884. Per summaria precum; COMPENDIUM FACTI. Petrus Ioannes Begliardi, de Guastallen. Dioecesis. Anno 1735, in testamento suo disposuit, ut tertia pars reditus bonorum suorum distribueretur pauperibus paroeciae suae; ita tamen, ut si inter eos adessent etiam parentes testatoris, isti omnibus aliis praeferendi essent. Secuto testatoris obitu, huiusmodi tertia redituum pars, libellis 136:93 nunc attingens, eiusdem consanguineis tantum distributa iugiter fuit, etsi ab anno 1836 in aliam Dioecesim porrexerint.

[*Latin ed. p. 449*]

GUASTALLEN. 449 The archpriest, administrator of this bequest, doubting whether, after examining the words of the will, those who are related by blood and reside outside the aforementioned parish still possessed this right, inquired of the episcopal curia; which responded that they had been excluded from this right, and also judged that, even if they resided in the parish, they could only obtain a larger portion of the bequest than other poor people. However, since the relatives insisted that they should receive the entire bequest, the matter was submitted to the judgment of the Apostolic See. Synopsis of the Discussion. RELATIVES ARE TO BE CONSIDERED. For it is clear from the words of the testator that he intended that the poor, and especially relatives, should be admitted to participate in the bequest, as long as they remained in the parish. Furthermore, the aforementioned words appear to be very clear. Indeed, when the words are clear,

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they admit of no interpretation, nor any conjecture about the will; Gloss, in cap. Cum dilectus 8 de consuetud. For the will is better declared by another than by the testator himself; Rota decis. 417 num. 5 part. 19 tom. 1 inter recent. Therefore, in this case, the following can be aptly applied: the testator expressed what he wanted, and did not express what he did not want. He certainly wanted his relatives to enjoy this bequest in a special way, as long as they were counted among the poor of the parish, and certainly not if they were compared with others. However, in the hypothesis that, even if they left the parish, they could still enjoy it, it does not seem that the entire bequest should be attributed to them. From the words presented, it appears that the testator did not absolutely prefer his relatives to other poor people, but rather that they should obtain a larger portion of the bequest than them. Indeed, since he seems to have granted all the poor of the parish the right to enjoy the bequest, it should not be considered that he subsequently deprived them of it. Nor does a contrary custom of great weight appear, by which relatives have received the entire bequest, even if... Acta, Tom. XVII. fase. CGI. 29

[*Latin ed. p. 450*]

450 GUASTALLEN. For some years, they resided elsewhere. For when this is opposed by the clear words of the testator, it seems to lack any force, and the length of time cannot render a perverse interpretation of the will reasonable. IT IS SEEN THAT RELATIVES ARE TO BE PREFERRED. However, it is useful to remember that it is a most accepted rule of interpretation that one must adhere primarily to the mind of the testator, rather than to the mere words. Indeed, if the entire context of the disposition, and the testator's intention, are considered, it undoubtedly appears that he intended to provide for the needs of his relatives, above others. Therefore, the interpretation that is favorable to them must be accepted, until another is clearly demonstrated to be contrary to it. Once this is established, it spontaneously follows from the words presented that the entire legacy should be granted to them, even if they reside elsewhere. It cannot be presumed that the testator intended to divide the legacy among outsiders, even if it would not have been enough to relieve the needs of even one of his relatives, or that he excluded his own relatives because they, perhaps pressed by poverty, migrated elsewhere. But, on the contrary, it seems safe to hold that the testator intended the legacy to be distributed according to the order of charity, which commands that the needs of relatives and kin should be provided for, in the best way possible; St. Thomas 2.2 q. 32 art. 9. Therefore, the condition of residence in the parish should be understood to apply to other poor people, who would benefit from the legacy in the absence of relatives. This interpretation is wonderfully confirmed by the observance of a very long period of time. From the testator's death to these times, without anyone contradicting, the relatives have consistently received the

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entire legacy, even if they have been absent from the parish for about fifty years. Indeed, such a long period of observance strongly demands that both interpretations be considered. It serves greatly to declare the testator's will, and to distinguish between an uncertain and doubtful will and a certain and clear one; Rota decis. 62 num. 3 part. IO inter recent. Therefore, the observance is the best foundation of the law.

[*Latin ed. p. 451*]

GÜASTALLEN. 451 The interpreter is called Lotter. Regarding this matter, see Lotter, *De re bene fíe*, Book 2, question 11, number 125. Cardinal De Luca, in *De iure patron*, discussion 80, number 9, claims the greatest authority, stating that, as in the title, he is the closest and most contemporary to Piton. See Piton, *Discept. Eccles.*, discussion 151, number 28, and Ceriniolen, *Interpretationis diei* of April 1, 1876. It must be noted that the lack of relatives should not, in the slightest, be raised as a doubt by the Bishop. Furthermore, if this frequently provides a reasonable cause for changing the dispositions of the testator, it does not seem that the words of the founder, as stated in the title, should be disregarded, if, with the same cause prompting, that interpretation is retained which adheres to observance, provided that the right of no one is certainly violated, and which is most fitting for the pious testator's compassion towards his relatives. With these things noted, the question is: what should be the answer to the prayers? RESOLUTION. The Sacred Order, after deliberation, on September 13, 1885, decided to respond: - The customary distribution of assistance, favoring poor relatives, must be maintained, even if they reside outside the parish. EX 8, CONGREGATIONE EP. ET REG. VENETIARUM SUPER VALIDITATE COMPROMISSI ET ELECTIONIS. On November 28, 1884. SUMMARY OF FACTS. Due to unfortunate circumstances, the Congregation of St. Philip in Venice now consists of only three religious men: Father Palmieri, Father Morchio, and Father Gabelli. These three, by virtue of their priesthood, are able to elect a Superior and to be elected as Superior. At the end of the year 1883.

[*Latin ed. p. 452*]

452 The Superior of the religious house of the Venetians was to be elected for the following three years. (1) And indeed, having undertaken such an election, they improperly used ten ballots; for in each ballot, each of the three electors obtained one vote. The electors were unable to follow the prescribed rule regarding the compromisers, due to a lack of candidates: for, after ten ballots had been completed, five compromisers were to be elected, who would choose one of the two who had obtained an equal number of votes in the aforementioned ballots. Since this could not be done, the compromiser P. Gabelli was elected by a majority of votes, who then elected P. Palmieri as Superior. However, this election was not

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considered legitimate by Father Morchio, who brought the matter before the judgment of the Apostolic See, so that it might be determined whether this election should be approved and observed in similar circumstances in the future. Synopsis of the Discussion. THE COMPROMISE APPEARS ILLEGITIMATE. FOR, by law, it is prescribed: "To make a compromise for the election, the consent of all those present is required, so that the dissent of one will prevent the compromise and, otherwise, the election will not be valid." (1) The rule states: "Three. St. Philip may confirm the office for three years." How, then, is the Superior to be elected for the third year? The rule of St. the Founder indicates in chapter 5, number 6: "It is true that they can repeat the scrutiny ten times; but after the tenth, if the majority has not agreed on one, a compromise shall be made, so that, as it is known, only five are chosen among the electors, in whom the most votes have converged, and the electors will give secret ballots to these five, in which the names of those to be chosen are written, either in writing or by print, so that they may throw them into a vessel, in the presence of two, for the purpose of being appointed to this office. The Superior will then be the one who has received the most ballots in his election, and he will be chosen, who, in the Congregation, will be more pleasing to his brothers. " In chapter 5, number 8, it is further stated: "If, when the compromise is read, and in the presence of the same two, the electors agree on the Superior, then the election of the Superior will be made in this way. He who is chosen by each of the compromisers, and who has received an equal number of votes from the two, will be elected."

[*Latin ed. p. 453*]

VENETIARUM 4S3 » lect. cap. Quia propter. » Thus, the Glossa and Ferraris, concerning election. When, however, the Rule of St. Philip, chapter 5, speaks of five compromissaries and is entirely silent concerning a single compromissary, it would seem, by common law, that that chapter should be interpreted in this manner. Furthermore, the constitution of a single compromissary would seem less probable, because he could have given a vote to himself; which, speaking generally, would not be entirely prohibited; the Abbot, in chapter 33 concerning election, writes: "If there are more compromissaries, they can choose someone from among themselves, although this is not expressly stated in the agreement, provided that it is not expressly prohibited." Furthermore, election does not seem to be able to be sustained on the basis of the theme, because every religious Order must follow its own Constitutions, which may even override common law, insofar as they have been approved by the Holy See. However, the rule of the Oratory prescribes five compromissaries, not one or three; therefore, what it has expressed, it is to be considered to have intended, and what it has not expressed, it is to be considered to have not intended. To the extent that it would seem that, in a case not expressly provided for, com-

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mon law should be consulted to admit a single compromissary, it would seem necessary that there be the unanimous consent of all, with no one excepted, as stated by Ferraris, v. election, n. 24: "Election by compromise is that which takes place when the chapter members, being present, grant the power to choose one or more individuals who will choose on behalf of all." It is stated in the common law, chapter in causes 30, concerning election: "To make a compromise for the purpose of election, the consent of all is required; so that the dissent of one prevents the compromise, and otherwise, the election is not valid," as stated in the decree, de elect., book 1, title 5, chapter 42. (1) (1) The cited chapter: "Because a college of faithful men, who secretly and diligently seek to discover the various forms of elections, from which many difficulties arise and great dangers threaten the churches, we decree that, when an election is held, it should be celebrated in the presence of all those who ought to be present and who desire to be present, and either the majority or at least the healthier part of the chapter should be present."

[*Latin ed. p. 454*]

4S4 It has been observed among the Venetians that, if it is deemed highly consonant with natural law and the rules that the consent of all parties is not required to establish a single arbitrator, then it would seem superfluous to hold a meeting before the election for that purpose; but it would suffice if those legitimately assembled were to discuss what should be done. A LEGITIMATE ARBITRATOR SEEMS APPROPRIATE. Indeed, it is certain that, according to the rule of St. Philip, chapter 5, paragraph 6, five arbitrators are to be appointed, provided that other means have been exhausted, namely, so that only five, chosen from the electors, may select the Superior from only two candidates; and therefore, the election does not seem to be left to a single arbitrator. However, it is not disputed among the Doctors that a case not contemplated by the rules is subject to common law: for a case omitted falls under the jurisdiction of common law. This is confirmed by the law in the Code of Appeals: "Whatever is not expressly stated in this law is understood to be subject to the rules and constitutions of the ancient laws." Adhering to this principle, chapter 29 on elections, § 6 states: "It is proper to harmonize laws with laws, and to avoid their corrections." Moreover, the fact that the election can be referred to a single arbitrator by common law is indicated by the very definition of an election by arbitration: "An election by arbitration takes place when the chapter members present grant the power to choose to one or more suitable men, who, in place of all, make the choice." (Reiffenstuel, book 1, title 6, paragraph 68). Therefore, the election of a single arbitrator is not excluded by common law. If, as Ferraris states, common law requires the consent of all parties for an election, and that dissent from one party prevents the agreement and renders the election invalid, this must be understood with a distinction regarding the

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arbitration: that is, it must be determined whether it is absolute or limited. For arbitration is entrusted to suitable men, acting in place of all the Church, to choose a pastor, which is not valid unless, perhaps, it has been commonly agreed upon by all, as if by inspiration. Otherwise, the election made would be vitiated and celebrated with a defect.

[*Latin ed. p. 455*]

In the VENETIARUM Province, 455 votes are present when the electors grant the compromissaries the power to freely choose a suitable person, either from within the order or from outside. However, a limited compromise pertains only to the necessary election of a specific person. In the first case, the consent of all votes is required; in the second case, the consent of the majority is sufficient. Regarding this matter, the canonists, following the rule that "that which concerns all must be approved by all," hold that the consent of all, without dissent, is required in the first case, or in an absolute compromise, so that no elector is deprived of the right to cast a vote. Reiffenstuel, in *lib. 1 de decr. tit. 6 de elect.*, states: "Furthermore, the given conclusion must be understood only with regard to an absolute compromise, and not with regard to a limited one. Indeed, there are two kinds of compromise: absolute and limited. An absolute compromise is that in which all the power of electing is transferred from the capitulars to the compromissaries, so that they can choose anyone who is suitable. Therefore, by virtue of such a compromise, even one who is not a member of the chapter can be elected, unless otherwise stated; *Glossa in eo Cum dilectus* 32. A limited compromise, generally speaking, is any agreement by which the compromissaries are given the power to elect only with some restriction, e.g., to elect one from within the order, or when some other similar restriction exists. Furthermore, it is sufficient for a compromise that the compromissaries are elected by the majority of the Chapter, as noted by Angelus in *summa v. electio* n. 27." And Cardinal Passerini, when explaining the opinions of those who generally require the consent of all the electors for the validity of the compromise in chapter 22 on election by compromise, adds in n. 20: "However, Gemi n. and Fran. in *cap. Cum expediat*, and others, limit this assertion to the absolute compromise, and they hold that in a limited compromise, it is not necessary that all agree in the election of the compromissaries, but the majority is sufficient. Furthermore, the practice followed by the Sacred Congregation of the Oratory in Rome for the election of the Prefect appears to be consistent with the method recently used in the Congregation of the VENETIARUM Province."

[*Latin ed. p. 456*]

456. OF THE VENETIANS. Since this matter had been brought to the attention of both parties, it was necessary to examine the question: Is the election of the Prefect valid in Kosso?

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RESOLUTION. After considering the matter, the Sacred Congregation and the Congregation of Religious, on November 28, 1884, decided to respond: Affirmative, and furthermore.

FROM WHICH THESE CONCLUSIONS ARE DERIVED:

I. Since it was not expressly stated in the constitutions or special laws that govern the religious order, it seems that the general rules of law apply; for it is accepted that a case omitted falls under the jurisdiction of common law.

II. It is certain that the rule of the Oratory of Saint Philip did not contemplate the case in which the election of the Prefect should be entrusted to a single compromissary; therefore, such a case must be subject to general law, or common law.

III. Common law does not disapprove of the election being entrusted to a single compromissary; but it seems to require the consent of all those who have the right to vote, when it is a matter of an absolute compromiss, in which the compromissary freely chooses any suitable person; and it requires the consent of the majority, when it is a matter of a limited compromiss; that is, when a specific person must be chosen.

IV. In an absolute compromiss, the compromissary freely exercises the rights of all the electors; and therefore, the consent of all those who have the right to vote is required, so that no one may seem to be deprived of their vote. But in a limited compromiss, since the compromissary does not act freely, but must choose a specific person, it seems sufficient that the consent of the majority of the electors is obtained, just as happens in any election.

(1) The difference in these two types of compromiss, when it comes to an election, seems to be that in the absolute compromiss, the person to be chosen is determined by them.

(1) The reason for this is that in the absolute compromiss, the electors are deprived of all authority regarding the election, and therefore they must all agree to complete the election; and therefore, the consent of all seems to be required. In the limited compromiss, however, it seems sufficient that the consent of the majority of the electors is obtained, just as happens in any election.

[*Latin ed. p. 457*]

VENETIARUM 457 V. Therefore, in matters not expressly prohibited by common law, the appointment of a single representative, instead of five, does not appear to be objectionable; nor is a compromise declared invalid, even if the consent of all parties is not obtained; because a compromise is limited, and pertains to the selection of a specific person from a group.

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CATA.CEN. PAROCHIALIS CONCERNING THE VALIDITY OF MUTATIONS AND PROVISIONS. Summary of Facts, dated November 28, 1884. The Bishop of Catana, now deceased, on January 15, 1882, reported to the Apostolic See that the parish priest, Gregory Nofito, to whom the parish of Saint Mary of Gratiarum in Fossato had been assigned by papal decree since 1876, was not held in good esteem by the people. The Archbishop stated that it was reported that he had cut down trees on Church property and had not fostered good morals. Then, after mature deliberation, the Sacred Congregation of Bishops and Regular Canons decided as follows: "Write to the Bishop, and signify to him that he should insist on the priest's resignation, and in the event of opposition, he should proceed with the investigation according to the instructions of June 11, 1880." (1)

However, the Bishop, not following the mandate of the Sacred Congregation, believed that the matter could be resolved without causing a disturbance, by having the aforementioned priest exchange parishes. He therefore approached Rosario Donato, who had obtained the parish of Magisano through a competitive process on May 1, 1881, and revealed his plan to him, believing that he could thus avoid the scandals that often follow a formally conducted investigation. The priest Rosario, although initially reluctant, did not long resist the Bishop's will, saying, "For the sake of reverence," (1) This instruction is found in Vol. XIII, 324.

[*Latin ed. p. 458*]

458. CATACEN. Furthermore, because the royal license had not yet been obtained, this occurred in the second year after the completion of the competition. Through this change, and through threats of suspension from the general vicar, I requested the parish from Fossato, said the priest Donatus, and I was admitted to its formal possession. However, when the act of change was presented to the regional procurator, he opposed the change, and declared that the royal license had been granted to the priest Donatus for the parish of Magisano, which he had initially obtained through a competition. The succeeding bishop appealed to the Sacred Congregation of Bishops and the Regulars, requesting that this change, made by his predecessor, be declared invalid, since it had not brought any benefit, but rather had been the cause of considerable harm to both peoples. Synopsis of the Arguments. ARGUMENTS SUPPORTING THE BISHOP'S PETITION. The actual bishop's petition was supported by the following arguments: Firstly, it was undisputed that for every vacant parish, a competition must be held according to Trident, Session 24, chapter 18, concerning reforms, and that any other provision or change made contrary to this chapter must, by law, be declared null and void: "Otherwise, all other provisions or appointments, except for the aforementioned form, are to be considered clandestine." The canonists also hold that provisions are of no value if they are

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made without observing the proper form of competition, according to the will of Benedict XIV, in his Constitution. Moreover, that only the Supreme Pontiff can derogate from these regulations. Therefore, even in Rome, if a parish priest wishes to be transferred to another parish, he must undergo a new competition and a new examination to determine whether he possesses the qualifications required for managing a vacant parish. Indeed, in the same city of Rome, it is customary for an apostolic license to be required whenever the transfer of a parish priest is deemed advisable. However, in the change that is being discussed, no authority from the Apostolic See was involved.

[*Latin ed. p. 459*]

CATACEN. 409. Neither was the Apostolic approval reserved; therefore, such a change, involving a relinquishment and exchange, would be invalid and of no value. It is certain that a Bishop, being an inferior authority, lacks the power to abolish or modify, with regard to common law, the Apostolic Constitutions which govern the discipline of the universal Church, without Apostolic authority; as stated in Benedict XIV, *De Synod. Dioec.*, book 9, chapter 1: "Nothing which prejudices the rights of the Apostolic See, or which is contrary to its authority, should be found in the Constitutions, whether of Provincial or Episcopal Synods." Since it appears from the aforementioned that the change in the matter is invalid, everything should be restored to its former state, and the parish of Magisano should be returned to the priest Donatus; for what is initially flawed cannot be made valid by the passage of time; as stated in *reg. 29 iur. civ.* Furthermore, it has been noted that the change in the matter cannot be sustained even due to the lack of consent from the part of the parish priest Donatus; therefore, the right remains for him to maintain himself in his parish. And indeed, after threats, which were not formally proven, it appears that Donatus at least experienced a reverential fear, while signing the act of the change; which the current Bishop also indicates. Therefore, assuming that such reverential fear was present, the principle of law applies: "that those things which are done by force and fear should lack firmness," as declared by Alexander III in chapter *Abbas, de iis quae vi metusque causa etc.* "When the abbot, thus compelled, conceded the church to another, because those things which are done by fear and force are, by law, to be declared void, we command that you restore the aforementioned to its integrity." Such acts are considered invalid and of no value due to reverential fear, as taught by Sánchez, book 4, dispute 7, numbers 5 and 7, and by the Sacred Rota, decree 870, *cor. Emerix*. Since the parish priest Donatus obtained the royal approval for the parish of Magisano on December 1, 1883, this removes even

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the cause that led him to the change.

[*Latin ed. p. 460*]

460 CATACEN. [The matter] was settled. Indeed, through his restoration, the unjust question ceases, and the matter falls into a situation from which it can begin. Furthermore, the priest of Nofito declared, in the very act of the exchange, that the revenues of the parish of Fossato were entirely free and secure; whereas, on the contrary, they still remained with Demanio. From this, it followed that Donatus, for at least some time, lacked sustenance and the sacred patrimony, contrary to the disposition of the Council of Trent, Session 20, chapter 2, concerning reforms. Therefore, since the exchange of benefices is prohibited by the sacred canons, Donatus ought, all the more, to be restored to the parish of Magisano, because he remained deprived of his sacred patrimony, according to the decrees of the Sacred Congregation in Baren, concerning resignation and restoration, of May 17, 1881. "It is understood that, in the case of a prohibited resignation, as it pertains to a benefit which the parish priest held in the title of the sacred order, in such a case, the action of spoliation is due, and everything that was not in the parish should be restored to him."

WHAT IS OPPOSED TO THE BISHOP'S PETITION. On the other hand, it was objected that the exchange should be admitted, with a just cause, even without Apostolic approval, provided that the consent of the respective Bishop was present. Indeed, the first canon in Decretum, concerning the exchange of things, states: "Those, however, who, according to the form of law, wish to exchange their benefices within the same diocese, which pertain to your collation, may freely and without fraud resign them in your hands." This kind of faculty is also granted to Bishops by the Canonists; Huth, *Jus Canonie*, I, title 10, n. 3, says: "If a resignation is made for the purpose of exchange, it can be made among those resigning even before the Ordinary." Schmalzgrueber, *Jus Universale Canonie*, title 19, n. 76. From this, it follows that the exchange, to which the Bishop has given his consent, cannot be said to be contrary to the disposition of the sacred canons. Moreover, the priest Donatus admitted this; therefore, what once pleased, should not now displease. Furthermore, since...

[*Latin ed. p. 461*]

CATACEN. 461. In all things, the spiritual good of the public must be considered first. It does not seem necessary to determine whether the people's hatred is just or unjust, or whether the pastor resigning offers a voluntary or necessary reason for resigning from the parish; for, according to the canon in Scotius, question 1, "the benefit of the majority must be preferred to the benefit of one, and the precepts of the law must be relaxed for the sake of peace." In similar cases, the Sacred Congregation has followed similar provisions, as seen in the decree concerning the suspension and removal

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of a parish priest in Piacenza, dated July 17, 1877; and in the decree of the Sacred Congregation of Councils in Limburg, dated December 19, 1857. However, there would be no reason to consider a change of position based on fear, as asserted by Donatus and mentioned in passing by the Bishop. For a formal act, existing for two years, must be considered valid until proven otherwise by positive documents. In this case, such documents do not appear to exist to prove that a serious and unjust fear was instilled; for a reverential fear must be joined with other threats in order to say that it is causing distress to a steadfast man. Therefore, it is certain that Donatus did not act out of reverential fear, but rather showed some obedience to his Bishop by resigning from the parish. Nor does it seem a serious difficulty that the priest, Donatus, remains deprived of the sacred patrimony in the parish of Magisano, since the Bishop, by this very act, has offered the same priest another benefit to replace the sacred patrimony. The requirements of the Council of Trent are easily met by the provision of another parish benefice. Indeed, Gallemart, in his declaration in chapter 2, session 21, number 3, states: "The Sacred Congregation of Councils considered it safe for the conscience of one who has resigned a benefice, to which he had been promoted, and has obtained another through a change of position, to remain silent about the fact that he was promoted to the first benefice." See also De Luca, *De Beneficiis*, discourse 38, number 9; and the decree of the Sacred Congregation in Asten, dated May 20, 1734, which states: "One certain Malabaina, in the year 1693, obtained a simple benefice, to which title he was also subsequently ordained to the sacred orders. He was promoted, but afterwards..."

[*Latin ed. p. 462*]

462 CATACEN. "The parochial church was first dismissed, without mentioning the title of the patrimony." Regarding a doubtful matter: "Whether the resignation is valid in this case." The Sacred Congregation responded: Negatively. With these observations, the following points were raised for discussion: I. Whether the exchange of two parishes is valid in this case. II. Whether and how the parishes of Magisano and Fossato should be consulted in this case. RESOLUTION. The Sacred Congregation of Bishops and Regular Canons, after deliberation on November 28, 1884, decided to respond as follows: To the first: Negatively. To the second: As provided in the first. FROM WHICH THE FOLLOWING ARE DERIVED: I. From Session 24, chapter 18 of the Council of Trent, vacant parochial churches cannot be given to a pastor unless with the concurrence [of the proper authority]; thus, all other provisions or institutions, except for the aforementioned form, are considered invalid and must be declared void by law, without the proper form of concurrence being observed. II. Hence, even in Rome, a pastor who is to be transferred to another parish must demonstrate, with concurrence, that he possesses the qualifications for the new parish, or

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obtain explicit apostolic approval, derogating from common law. III. This common law sanction can only be overridden by Bishops, but only by the Roman Pontiffs; therefore, nothing that could prejudice the rights of the Apostolic See, or undermine its authority, should be found in the Constitutions or in the Synods, whether provincial or episcopal. IV. In the matter under consideration, the Bishop has fulfilled everything with his own authority, even contrary to the prescription of the Sacred Congregation, and without a just cause, which is necessity or the benefit of the Church; for, since the exchange was initiated, dissensions and scandals have arisen among the people.

[*Latin ed. p. 463*]

463 FROM Instruction 3 of the Congregation of Indulgences, in which various doubts concerning the Seraphic Rosary, etc., are explained. MOST HOLY FATHER, the Archbishop of Gorizia humbly requests a solution from the Holy Congregation of Indulgences regarding the following doubts: 1° Do the Brothers and Sisters of the three Orders of the Most Holy Francis, when reciting the Seraphic Rosary (7 decades), obtain, in each instance, the plenary Indulgence, as previously granted by the most recent Constitution of Pope Leo XIII, "Misericors Dei Filius"? 2° Do the members of the Tertiary Order, when reciting Psalm 19, "May the Lord hear thee in the day of tribulation.", after Communion, obtain Indulgences, considering the communication of privileges with the First and Second Orders of Saint Francis, and with other Orders, such as the Camaldolese, Augustinians, etc.? In general, does a communication of privileges still exist for the Tertiary Order? 3° Father Boniface, Provincial Minister of the Franciscan Missionary Brothers of the West-Rhineland Province, submitted the following doubt to the Holy Congregation of Indulgences: "Does the plenary Indulgence and Benediction granted to the Tertiary Order (formerly called the general absolution) with the Papal Blessing, granted by a special privilege on the feast of Saint Aloysius Gonzaga, on June 21st (on which day the anniversary of the investiture of Pope Pius IX as a Tertiary is celebrated), still retain its value after the declaration of the Holy See dated June 7, 1882?" And he received the response on December 30, 1882: "Affirmatively, because a special privilege, in order to cease, must be revoked only by a special revocation." Should this declaration still be followed, or not? 4° In the perpetual Calendar of the Order of the Most Holy Francis, and consequently in the liturgical Directory of the Province of the Holy Cross in Croatia and Carniola, plenary Indulgences are noted for certain days, which can be obtained by any Christian who visits the churches of the Order of Saint Francis, under the usual conditions. The question is, is it sufficient for the members of the Third Order of Saint Francis, as has been the case so far, to visit their own parish churches in order to obtain such Indulgences, or is it

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necessary for them, regardless of any distance (even 10-20 hours), to attend the churches of the aforementioned Order? The Holy Congregation for Indulgences and Sacred Relics, after considering the doubts presented, responded as follows: Regarding 1: Negatively. Regarding 2: Negatively for both parts. Regarding 3: Negatively, after the publication of the Apostolic Constitution "Misericors Dei Filius." Regarding 4: Regarding the first part, Negatively; regarding the second part, Affirmatively. Given in Rome, from the Secretariat of the aforementioned Holy Congregation, on June 12, 1884. L. CARDINAL BONAPARTE, as Prefect. CARDINAL OREGLIA, of the Holy Stephen. FRANCIS DELLA VOLPE, Secretary.

[*Latin ed. p. 464*]

464 FROM THE HOLY CONGREGATION OF THE INDEX, DECREE, Tuesday, March 23, 1885. The Holy Congregation of Eminent and Reverend Cardinals of the Holy Roman Church, by order of the Most Holy Lord Pope Leo XIII and the Holy Apostolic See, concerning the Index of books of pernicious doctrine, and their condemnation, proscription, expurgation, and permission throughout the Christian Republic, having met in the Apostolic Palace at the Vatican on March 23, 1885, condemned and condemns, proscribes and proscribes, and orders that the following works be referred to the Index of Prohibited Books, or are already condemned and proscribed:

* *Della Educazione religiosa e civile delle fanciulle in conformità alle attuali condizioni d'Italia.* Dialogues by the Reverend Professor Ambrogio Garavaglia, Knight of the Most Holy Orders of St. Maurice and Lazarus, and of Italy, Volume 2. Milan, Fratelli Dumolard publishers, 1884. The author commendably submitted and disapproved of the work.

* *Prof. Filippo Cicchitti-Suriani della chiesa cattolica italiana. La Religione nella Scienza e la Tirannide della Coscienza,* with a preface by Monsignor G. B. Savarese. Rome, Forzani and C, printers of the Senate, publishers, 1885.

Therefore, no one of any rank or condition may dare to publish, read, or retain the aforementioned condemned and proscribed work, in any place or language, but rather they are bound to hand it over to the Ordinary of the place, or to Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books.

These matters, having been reported to the Most Holy Lord Pope Leo XIII by me, the undersigned S.I.C. from the Secret Archives, His Holiness approved the Decree and ordered it to be promulgated. In witness whereof, etc.

Given in Rome on March 23, 1885.

By Fr. Thomas M. Cardinal Martinelli, Prefect.

Fr. Hieronymus Pius Saccheri, Order of Preachers, Sacred Congregation of the Index, from the Secret Archives.

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(Place for Seal)

On March 28, 1885, I, the undersigned, Magister Cursorum, testify that the aforementioned Decree was affixed and made public in the City.

Vincentius Benaglia, Magister Cursorum.

[*Latin ed. p. 465*]

465 FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, CIRCULAR LETTERS from the Eminence of the Cardinal Prefect to Bishops and Apostolic Vicars, concerning the immovable properties of the Sacred Congregation, subject to conversion. To the Most Reverend and Reverend Lord, the Most Reverend and Reverend Prelate: The sentence of the Court of Cassation of Roma, which condemned the immovable properties of this Sacred Congregation to conversion, has now been almost entirely executed. Therefore, from this time forward, the means at the disposal of this worldwide Institute, founded by the Popes for the propagation of the Gospel and of civilization, will depend entirely on the good will of that government which, in the year 1870, by means manifest to all, seized Roma, declaring that it would, in the face of Europe and of all Catholics, assume the responsibility for maintaining the security of the Papacy, and solemnly promising to preserve for the Head of the Church, on the banks of the Tiber, a glorious and independent seat from all human sovereignty. (Letter of Victor Emmanuel to Pius IX, September 8, 1870). Since Your Eminence, in this unfortunate circumstance, raised your voice to condemn that act, and clearly showed how much both you and the faithful entrusted to your care were committed to defending the rights of this meritorious institution, I believe that it is, indeed, a sad thing to acknowledge that the common efforts of the sacred episcopate and of noble Catholic men, and even of heterodox men, against the aforementioned action, have been in vain.

[*Latin ed. p. 466*]

LETTERS 466: It will be a painful thing to know that, in the midst of Europe, the combined efforts of every wicked person against the episcopate and the most Catholic part of the laity, and against the Head [of the Church], are no longer restrained, and that it is permitted to attempt and even carry out heresy with impunity. — Although some effect has been achieved against the very beginnings of these attacks, by means of a power that now allows the Congregation for the Propagation of the Faith to be subjected to every excess against the Catholic Church in the midst of Europe, by taking away and subtracting the free administration and use of its goods, and by its Head [Augusta], this has not failed to solemnly protest: but today, almost all of its goods have already been seized, and I, as Prefect of this Congregation, consider it my duty to repeat a new protest against an act so damaging to its freedom, and therefore so harmful to its indepen-

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dence in the sublime ministry of preserving and propagating Christianity throughout the world, especially in those regions which have not yet embraced civilized ways. This offense is all the more intolerable, inasmuch as the necessity of providing for the numerous needs of the missionary undertakings is becoming increasingly evident. Not to mention the constant disasters to which many vicariates, especially in the extreme East, are subject, which cause us great sorrow, and to which we are unable to provide timely and appropriate remedies: a greater sorrow afflicts us when we see the vast field, which in the very heart of Africa and the islands of Oceania, is being devastated by a powerful European...

[*Latin ed. p. 467*]

Considerable and proportionate aid is needed; a greater sorrow is felt when one considers the vast field that opens before us through the powerful colonizing action of Europe, in the immense lands of Africa and the oceanic islands, where countless peoples are now called to participate in the benefits of civilization. One cannot but experience profound pain in seeing oneself prevented from utilizing that sacred patrimony which the entire Catholic Church entrusted to the Propaganda, and not to a government, for the evangelization and civilization of those wretched peoples; and in seeing the necessary number of evangelical workers lacking, both due to the ill-advised suppression of religious orders, and due to the violent expropriation of several colleges which the Holy Congregation possessed in Rome for the purpose of educating and forming apostolic missionaries. This expropriation, together with the obligation of military service imposed on clerics and priests, has almost completely reduced the Italian missions to nothing, and forces the Propaganda to replace them with missionaries from other nations. It is these great anxieties and sorrows that tear at every Catholic heart in Italy; nevertheless, there is consolation, for in foreign lands there are pious associations which, with true zeal, daily bring new colonists there, and where, therefore, countless peoples are called to embrace civil customs.

Indeed, we cannot but be deeply grieved, seeing ourselves prevented from utilizing that sacred patrimony which all Catholics have entrusted to the Holy Congregation for the Propagation of the Faith, and not to the administrators of the public affairs in Italy; seeing, I say, the necessary number of evangelical workers lacking, both due to the ill-considered suppression of religious orders, and also due to the violent seizure of certain colleges which this same Congregation possessed in Rome, for the purpose of educating evangelical heralds. This seizure, and also the obligation of military service imposed upon clerics and priests, has almost completely abolished these Italian missions, and forces this Congregation for the Propagation of the Faith to suffice with evangelical heralds brought from other nations. Amidst these anxieties and sorrows, which tear at every Catholic

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in Italy, we nevertheless find consolation, for in many foreign lands, certain societies have already been established, which, with sincere zeal and constant care, strive with the greatest diligence in that work, namely, to convert the people to the truth of the Gospel.

[*Latin ed. p. 468*]

468 Letters, with zeal and constant effort, strive to aid the sublime work of converting peoples to the truth of the Gospel. Among these, the most prominent is certainly that of the Propagation of the Faith, which, even despite the most grievous present circumstances in Galliae, makes truly prodigious efforts to achieve this goal, collecting not only the rich offerings of the wealthy, but also the humble alms of the people. But while it rejoices in the marvelous growth of the missionary movement, and the continuous erection of new Churches accomplished by the Propaganda, it laments that it cannot provide sufficient endowments for their maintenance and development. The offices founded by the Holy Congregation in various parts of the world have already begun to receive bequests and legacies, which, however, are still not sufficient to meet the extraordinary and almost daily needs in which it is sometimes compelled to use even the new capital that it freely administers outside of Italia. These are the reasons for which I again turn to Your Excellency, urging your zeal, so that you may make known to the Christians under your care the difficult situation of this Institute, and exhort them earnestly to contribute with the greatest fervor to the collections for the pious works of the Propagation of the Faith mentioned above, as well as for others of a similar nature. In this endeavor, the Society which derives its name from the Propagation of the Faith is undoubtedly foremost, which, even in these sorrowful times in Galliae, makes efforts similar to a prodigy to achieve this goal, collecting both the generous gifts of the wealthy and the humble alms of the common people. But although it rejoices in the marvelous growth of Catholic missions and the Churches founded by the Congregation for the Propagation of the Faith, it nonetheless laments that it cannot provide the endowments that are sufficient to maintain and develop them. Through the offices established by this Holy Congregation in various regions of the world, bequests and legacies have already begun to be received, which, however, are still not sufficient to meet the extraordinary and almost daily needs; for which reason the same Holy Congregation is sometimes compelled to expend even the new capital that it possesses outside of Italia. For these reasons, I, Your Eminence and Reverend Prelate, again implore you, stirring your own zeal, to make known to those Christians under your care the difficult condition of this Institute, and to urge them earnestly to contribute to pious works; such as are the societies called the Propagation of the Faith, which I mentioned above, or the Holy Infant Jesus, or the Oriental Schools, and other institutions established for

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this purpose; and also, with regard to more substantial contributions...

[*Latin ed. p. 469*]

To the Most Reverend Fathers, concerning the Infant Jesus Societies, the Schools of the Orient, and other associations established for a similar purpose, and also, as far as it pertains to the most affluent, to generously dedicate a portion of their rich patrimonies to the most noble and most holy of causes, that of the Faith and of civilization. Considering the present movement, it can be stated with rigorous clarity, "Do not you say: There are yet four months, and then the harvest cometh? Behold, I say to you, lift up your eyes, and see the countries. For they are white already to harvest." "Then he saith to his disciples, The harvest indeed is great, but the labourers are few." Only the piety of the faithful and the love for the spread of Christian civilization can come to the aid of this sublime ministry of the Apostolate and make it triumph on earth. From the Congregation for the Propagation of the Faith, on the solemnity of the Epiphany, 1885.

Most Reverend Cardinal D. ARCI SIMEONI, Prefect.

D. A.RCH. TYR., Secretary.

[*Latin ed. p. 470*]

470 FROM THE HOLY CONGREGATION OF THE COUNCIL OF FERETRANA, APPOINTED BY POPE PIUS. Dated September 13, 1884. SUMMARY OF FACTS. In the year 1851, six pious testators established a perpetual endowment for the celebration of Masses on feast days, designating two properties for the implementation of this endowment, named "Prati delia Serra" and "Prato de' Conti," for the sum of 750 scudi and an annual income of 30 scudi; while the value and income of these properties greatly exceeded the aforementioned sums of money. Anthony Tombi, having inherited this, faithfully fulfilled the pious will of the testators. However, when he passed away in the year 1880, the entire right passed to three sisters, and nieces from two deceased sisters; who, on January 14 of this year, presented a petition to the Most Holy See, stating that they had begun to consider the assumption of the endowment by Philumena Lonfernini; but the heirs, observing that the properties designated by the testators for the fulfillment of the endowment were abundant and exceeded the sum previously established by the founders, brought a portion of these properties into the division. And, in establishing an endowment of 750 scudi for the same endowment, with an annual income of 30 scudi, they requested that the Apostolic See authentically declare that such a sum of money would be sufficient for the said endowment, and that the stable assets of the Lonfernini family could serve as collateral for the endowment

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and income, with a mortgage inscription.

[*Latin ed. p. 471*]

FERETRANO 471. A SYNOPTIC DISCUSSION, SUMMARILY PRESENTED, IS TO BE CONSIDERED. (1) In order to resolve this controversy, it was first investigated whether the sum of thirty denarii, which is to sustain the burden of the Masses, was designated either by taxation or by demonstration. Indeed, some of the Doctors are wont to distinguish in this manner: if the fund or place from to which the quantity is to be received is added and assigned in the same sentence, then the assignment has the force of taxation; but if it is in a different sentence, then the demonstration itself has force. Others, however, distinguish whether the fund is added to the very bequest, or to the donation or contract, or whether it is added to the execution and payment. In the first case, they believe that taxation takes precedence; in the second, demonstration takes precedence. For, since the substance of the obligation consists in a certain quantity, the obligation is not changed, nor is the quantity diminished, by the fact that the testator designates a fund or place from which the same quantity is to be received. The foundation of this doctrine is repeated from L. Quidam testamento ff. de Legai. 1, in which it is said that the testator bequeathed "to Pamphilia four hundred gold coins... from Julius, four hundred gold coins, and in the *castris* which I have, four hundred gold coins, and in the numbered [items] which I have, four hundred gold coins." Furthermore, "although the testator had used these gold coins for other purposes," Julian replied, "it is more likely that the testator intended to demonstrate to the heirs from where the four hundred gold coins could be obtained, without detriment to the family estate, rather than to impose a condition of *deicomissum* on what was initially given freely." The same seems to be the case from L. 27 ff. de Leg. 3, and L. 5 ff. de Trit. vino et oleo leg. Hence, Averanius, in *Interp. Iuris*, Lib. 2, cap. 27, after having extensively discussed this controversy, concludes: "Therefore, it appears that the testator intended to demonstrate (1) It should be noted that if this sum is said to be designated, whether it is designated by taxation or by demonstration, then in the case where the heirs are obligated to bear this burden, they are only obligated to restore the value of the said sum for the purpose of fulfilling the obligation for the Masses, if the sum is lacking."

[*Latin ed. p. 472*]

472 FERETRANA: "To the heir, from whom it might conveniently receive the quantity [of goods] for sale, then the addition of the place or property does not constitute a condition; nor does it obtain the place of taxation." "However, the addition of the place *does* constitute a condition, and it obtains the place of taxation whenever the substance of the obligation is diminished." L.-l § ult. ff. De Cond. et dem. Nor do ecclesiastical jurists

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seem to hold a different opinion. I believe that the rule they themselves transmit is the same, and which the Sacred Congregation has consistently followed. It is best to refer to the words of De Vecchiis and Benedict XIV, the most illustrious of former members of the Sacred Congregation, in secret. Therefore, the first, in Crispin, *De Visitatione Pastorali*, part 2, § 18, number 6, says: "In order to determine whether a quantity has been taxed, or rather demonstrated, it is not displeasing to follow this rule of the same Felinus, namely, when the testator begins with an obligation, and then adds a mode for its fulfillment, as if he were to say: 'Let Masses be celebrated, for which my heir will pay, for example, ten scudi': from this form of words, the demonstration, and not the taxation, is to be understood." Thus, Gratian, Perez, De Gara, Moneta, and others, as cited by Pasqualigo in *De Sacrificiis novae legis*, question 1023, teach. The same was held by the Holy Rota, decision 795, number 7, before Ansaldo; and in the Legati of Urbevetana, on December 3, 1753, § 6, before Russio. The reason is, because if the testator has assigned an obligation, and then afterwards provides for the revenue for its fulfillment, it is considered that he absolutely intended the fulfillment, and that the revenue was demonstratively added for its satisfaction, as Scarfant. *Animadversiones Ceccop.*, Book 9, Title 14, number 2; or, in other words, he simply and purely intended to impose the obligation on the heir, but nevertheless demonstrated the place or property from which the heir could, without causing any inconvenience to the family estate, take money to fulfill said obligation. However, whenever "the disposition begins with the designation of a property" or dowry, the revenue of which is to be used for the fulfillment of the prescribed obligation, and then proceeds to express and define the obligation of Masses, then they say that the constitution of the dowry property appears to have been made taxatively; so that if it is lost, or if, alternatively, the revenues are diminished or the stipend increased, then...

[*Latin ed. p. 473*]

FERETRANA 473 » As a supplement, but the reduction of Masses should be considered under the superior authority, as stated by Benedict XIV in *De Synodo Diocesana*, book 13, chapter last, paragraph 32, number 32. » And rightly so, because when the income of a certain property is established for the purpose of fulfilling an obligation, it is clear that the testator intended that the other properties should pass freely to the heirs, and that the designated income of the property should serve in place of taxation. *L. 5 De trit. vin. et ole.*, law. This rule is followed by, in addition to the aforementioned authorities, Pignat. *Consilia*, 1101, volume 9; Barbosa *De officio et potestate Episcopi*; Crispinus *in Visitat. Pastoral*; and the Roman Rota in *Romana*, Supplement and application, on June 11, 1731, §. Then before Abdovrando; and in *Romana Salviani*, February 16, 1753, before Molino, and the Sacred Congregation has affirmed it on several occasions,

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emphasizing it while granting the faculty to reduce Masses. With these rules established, it remains to be diligently investigated how and whether they can be applied in this case. Indeed, upon examining the order of disposition, it is clear that the sum of only 30 scudi was added demonstratively. For the testators begin purely and simply by establishing the obligation; and only in the subsequent paragraph do they mention the sum of money for the Masses to be said, and the property from which it is to be taken. From these words, it is clear that the testators clearly intended that the designated property of this legacy should remain permanently bound by this obligation; and that the heirs, faithfully fulfilling the obligations of the Masses, should enjoy the remaining income. However, even with this in mind, some doubt may exist; but in this case, it is certain and undeniable that the testators intended a perpetual obligation for Masses for which the aforementioned property is obligated. Indeed, whether the legacy was left in a tax or demonstrative manner, when the favor of pious causes is present, one should always adhere to the demonstration, as argued in *L. 40 §§. Seia ff. De auro argen, leg.*; Amostazo *De causis piis*, Book 2, chapter 6, number 15; Surd. *De alim.*, title 8, *Priv.*, 25, number 6. But it is best to hear the most learned De Luca, who, in *Disputationes*, 14 *De Legatis*, treating this very question, teaches that...

[*Latin ed. p. 474*]

474 FERETRANA: «In dubio, potius pro demonstrativa, quam pro taxativa» respondendum sit, praesumendo voluntatem disponentis eo modo, quo melius ac pinguius illa impleri potest. Ex conclusione, ut quemadmodum in legatis prophanis seu alias, ob praesumptam maiorem haeredis dilectionem, ambigua seu aequivoca interpretandum est ut minus gravet, ita e converso pia legata interpretationem habeant in oppositionem. Cui concinunt tum Bened. XIV, *De Syn. Dioeces*, lib. et cap. cit., n. 33; tum Altoviti, S. C. C., olim Secretarii, qui in voto exarato in causa Brixien, diei decembris 1685, postquam pro regula posuerat, in dubio existimandum esse mandatum fuisse, fundum demonstrative non autem taxative designatum fuisse, ita pergit: «Attamen haec regula praecedit vel quando fuit legata quantitas, vel quando fuit legata res in genere, vel quando fuit legata res in specie, quae remanet penes haeredem habentem onus curandi celebrationem.» Quae in themate mirifice aptantur. Tandem illud perpendere iuvat, fundatores ad Missarum onus explendum praedia designasse; in praesentiarum eadem extare, eorumque reditus ad id satis superque reperiri. Nulla igitur adesse ratio videtur cur haeredes haud teneantur ad testatorum voluntatem adimplendam quoscumque reditus pro Missarum satisfactione necessarios impendere. Cum itaque luculenter appareat memoratam summam demonstrative designatam fuisse, sponte consequitur oratorum preces reiiciendas esse. Et re quidem vera testatores prohibuerunt ne praedia possint unquam dividi aut

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frangi: ast ex utroque iure testatorum voluntas, legis instar habetur. Et R. Pontifex ipse hanc non immutat voluntatem, nisi rationabilis subsit causa. Haec vero in themate prorsus abesse, et illa ab oratoribus allata flocci facienda videtur. Cum enim ingentem summam libellarum 110,000 inter se diviserint, ingratitudinis notam erga suos consanguineos inurerentur, si pingui portione minime contenti, exiguam haereditatis partem pro sacris piacularibus assignatam inhiarent.

[*Latin ed. p. 475*]

FERETRANA 475. Praeterea, in consideratione de terris quae nunc desiderantur ad satisfaciem legati, notatum est quod hae sunt ager aridi; dumtaxat, terrae quae a testatoribus assignatae sunt, sunt fertiles. Praeterea, non est oblitum recordari quod petito oratores violaret ius acquisitum populo, cuius commodo legatum Missarum institutum est. Verum est, si assignantur tantum 30 scutatorum, et nunc difficile invenitur sacerdos qui pro tali stipendio talem onus sustinere velit, certe, cum tempore, ad reductionem Missarum pervenire debebit. Hinc, pars plebis christianae, iure acquisito, partim privabitur, quod apertam iniustitiam afferat, cum utrumque ius, foedere amicitiae, summam iniuriam esse proclamant, cum ius alicuium aufertur. Quare, incolae praecipui parochiae, iure et merito, opponuntur petitioni heredum. SUMMA TAXATIVELY DESIGNATA VIDESE. Ex altera parte, notatum est quod, etsi, inspecta dispositione, quae supra allatae sunt, manifestam causam contra oratores videntur, tamen non est praeclusus aditus investigationi tutiori voluntatis defunctorum. Ferraris, *Bibi.*, can. appen. ad verb. Legatum. Quoniam non desunt auctores qui docent inchoationem scripturae ab onere non nisi probabile argumentum praebere; Mantic., *De coniecturis*, lib. 12, tit. 6, n. 24; Lanfredin., *Respons.*, Eccles., 42, n. 4. Quibus consentit Card. De Luca, qui, *Discept.*, 14, n. 9 et seq., de Legatis, ait: «Scribentes, pro consueta leguleia insipidura, totam vim consti» fuere soleant in verborum ordine... Attamen, pergit in» ferius, mihi id numquam placuit, quoniam ex proposi» tione prae oculis semper habenda, ut non cortex et figura » verborum, sed substantia veritatis attendi debeat: erro> neum videtur ita generaliter decisionem regulare cum > hac formalitate verborum, quae potius Notarii quam te» statoris esse videtur.» Quapropter, observandum est quid praecise voluerunt testatores, non quid coniecturis eruere possumus. Iam-

[*Latin ed. p. 476*]

476. From the entire context of the foundation document, it is quite clear that the testators intended to burden the heirs, or possessors of the aforementioned properties, with a determined sum of money, and they expressed this intention. From this, it appears that the testators condemned the heirs to pay the sum of money that they designated, which designation could be called definitive, since it was like a legacy

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of a specific quantity. This is indeed suggested more and more by the fact that six testators, assigning a sum of 30 scudi for the satisfaction of the legacy, each added five scudi immediately: "This legacy shall begin, according to its proportion, after the death of any one of us." Therefore, when one of them had passed away, five scudi were to be spent for sacred purposes, and consequently, after all had departed this life, the heirs were only obligated to pay 30 scudi. This, indeed, seems to demonstrate that the aforementioned sum of money had been definitively established. However, it is even more strongly to be admitted if one considers the final words of the disposition, in which, more clearly explaining their intention, they concluded: "To avoid obstacles, for the fulfillment of the legacy, we establish a sum of thirty scudi per year, so that, according to what is added, it may be increased or decreased by the priest celebrating." From this, it is quite clear that they intended that the heirs should not be obligated to pay a greater sum of money for this purpose. Furthermore, it does not seem that a pious reason could be considered to help in cases of doubt; for, besides the fact that, in doubtful cases, one must rule in favor of the heir, as L. Idem Iulianus ff. §. Scio De Leg. 1; Surd. De olim. tit. 8 n. 2, and in obscure cases, the minimum is to be followed, Cap. 30 De Reg. Iur. in 6 and L. 9 ff. eod., it cannot be presumed that the testators, who with such diligence described the burdens of the legacy and its revenues, neglected the burdens of the heir, in the event that the established revenues were insufficient. Therefore, it appears that the aforementioned statement is suitable to the theme, expressing what the testators intended. However, less weight should be given to the statements cited from the authors above, since they could refer to other things.

[*Latin ed. p. 477*]

In the case of FERETRANA, there are 477 instances where the revenue from a bequeathed estate was insufficient, and in such cases, the heirs were obligated to supplement the amount to reach the total sum desired by the testator. However, in the present case, what the founders intended is clear, as the sum prescribed by them is explicitly stated; therefore, there appears to be no reason why the heirs should be burdened with more than what was established by the testators. These points were considered by the Bishops. Therefore, setting aside the controversy, it is clear that the aforementioned sum of money was definitively established, and it should be favored in the expressions of the petitioners. For, from what has been stated, it appears that only 30 scudi are to be spent for the satisfaction of the legacy, provided that this revenue is secured; it matters little whether the heirs divide the property or the surplus revenue among themselves. As for the security of the revenue, there is no ambiguity, since it is established in rural lands, and the Prelate himself does not foresee any difficulties arising from it. With these and other arguments presented by both sides, the proposed questions

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were to be resolved. I. Whether the annual sum of 30 scudi was demonstrably or definitively designated for the satisfaction of the pious legacy in this case. II. Whether and how the requests of the petitioners should be granted in this case. RESOLUTION. After deliberation, the Sacred Congregation responded on September 1, 1884, as follows: - Regarding I: Affirmative to the first part, negative to the second part. Regarding II: Negative in all respects. FROM WHICH IT IS UNDERSTOOD: I. The heirs are to be held liable to supplement whatever is lacking for the fulfillment of the legacy, to the extent that, over time, either the lands are lost or the sum of thirty scudi is no longer sufficient to fulfill the obligation; and because the founders intended this obligation to be perpetual. II. To the extent that it is doubtful whether a legacy was actually left.

[*Latin ed. p. 478*]

478. In the matter of FERETRANO, it is to be understood, either demonstratively or by way of specification, that one must adhere to the stipulations of the document, since in such a case, the favor of the pious cause is implied, presuming that the testator intended that the bequest be fulfilled in the best and most complete manner possible. III. To determine whether a specific amount has been designated, one must consider whether the testator began by stating the obligation and then indicated a means of fulfilling it; in such a case, the testator intended to impose the obligation purely and simply upon the heir, and merely demonstrated the property from which the heir could obtain the money to satisfy the obligation. IV. However, if the testator begins by designating a property, the income from which is to be used to fulfill the obligation, and then defines the obligation as the payment of Masses, then the designation of the property is to be understood as a specification; in this case, the heir is not obligated to provide any additional funds, even if, after deducting expenses, the income from the property is insufficient, or if the stipend for the Masses is increased. V. In the case of testaments, it appears that testators often begin by establishing an obligation purely and simply, and then add a demonstrative provision of thirty scudi for the celebration of Masses, designating the properties from which the necessary funds could be obtained. FOROSEMPRONI. DEROGATION OF THE WILL. September 13, 1884. By summary proceedings. Aloysius Battistini of Fossombrone, in the year 1879, designated his sons as universal heirs; to his wife, Catherine, he bequeathed the usufruct of all his property, with the condition that she not dispose of it for other purposes; in that case, her usufruct would immediately cease. However, after the death of her husband, Catherine, still in her prime years and in a state of widowhood, was soon afflicted, and presented petitions to the Bishop, requesting that

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he grant her permission to marry Joseph.

[*Latin ed. p. 479*]

FOROSEMPRONIEN. 479. [A woman] sought a dispensation, on the condition that a civil ceremony be performed to fulfill the requirements of civil law, so that she might not lose the use and enjoyment of property left to her by her deceased husband. The Bishop repeatedly denied this request. The woman then petitioned the Apostolic See, stating that she wished to avoid the danger of incontinence, which threatened her due to her excessive familiarity with Joseph.

Disputatio Synoptica. Although the condition of celibacy is considered burdensome if added to a heir or legatee who has never been married, if that person receives 25,000 sesterces, L. 72 ff. Regarding this, and demonstrating with respect to a widow that it is a valid and permissible provision under both laws, Sánchez, lib. 7, De Matrim, dict. 91, no. 16; Guttier, De Matrim, cap. Hi, no. 1; Gonzalez, De Matrim, tit. de secund. nuptiis, n. 9; Reiffenstuel, cit. tit., no. 49; thus, if a woman is entering into other vows, she immediately loses whatever has been bequeathed to her by her husband. And this law is justly enacted, since it is most equitable that a woman, having entered into a new marriage, should be deprived of the goods of that spouse, of whose memory she has not only failed to erase, but also demonstrates that she despises his will.

However, since in our times ecclesiastical marriage is not considered null by civil authority, Catherine, understanding the condition imposed by her husband in his will, wished to enter into marriage before the Church, and at the same time retain the full use and enjoyment of her property: which would involve an open fraud against the testator's will, and whose execution should be prevented by ecclesiastical authority.

It must also be noted that the woman's marriage would be to the detriment of her two sons. The Roman jurists, understanding this, rightly decreed that a mother, entering into a new marriage, should not only be deprived of the guardianship of her children from her previous marriage, L. Mares 2 Cod., but should also be removed from their care, L. Si Pater 3 Cod., ibid.; but also that she should be removed from their care, L. Quod si nolit 31 §. 13 ff. De Aedilitio.

PRAYERS REJECTED.

[*Latin ed. p. 480*]

480. FOROSEMPRONIEN. [Referring to an edict; Reiffenstuel, book 4, Decretal, title 21, number 39; Sánchez, on marriage, book 7, disputation 88, numbers 4 and 11.] Indeed, a very serious presumption exists, namely, that the mother neglects the care of the children of her former marriage,

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and that she spends the goods of the former marriage on the children born from another marriage. And so that the children might not lack any remedy before the civil law, so that they might be able to defend their rights against the actions of the mother, because the mother never enters into a civil ceremony, a civil marriage. PRAYERS ARE TO BE OFFERED. But it is also fitting to remember that the Roman Pontiff, by virtue of the very broad power that He possesses, can change the wills of testators, even if this indirectly leads to the detriment of another's acquired right. Clement. *Quia contigit* (2, on religious houses). Council of Trent, session 22, chapter 6, on reform. Fagnan, on the law of patronage, part 5, canon 11, case 4, number 2; Fagnan, ad cap. *Caeterum de Rescript*, numbers 18 and 26. Indeed, a reasonable cause is required, but this seems to be completely lacking in this matter. Certainly, Catherine is still very young, the man with whom she desires to enter into marriage is very eager, and the apostolic indulgence is earnestly requested to avoid the danger of concubinage. Among the just causes that lead the Supreme Pastor of the Church to change a will, the most serious indeed seems to be verified when the eternal salvation of souls is put in danger. For it is His duty to expend all care, lest the sheep entrusted to Him perish miserably, and, considering their fragility, to remove any occasion of sin, so that He might safely lead them to the heavenly fold. Nor is it necessary, according to the warning of Coscius, *De separ. et div. coniug.*, book 3, chapter 2, number 107, "that scandals arise in order to provide a remedy," but rather, when evils are foreseen or feared, it is the duty of the highest Moderator of the Church to provide for them opportunely. Nor does this change of will seem absolutely contrary to the testator's mind. In the first place, it should be safely presumed that he himself, by introducing that condition, did not intend...

[*Latin ed. p. 481*]

FOROSEMPRONIEN. 481. It was thought that his wife would abandon him in his youth. He may further presume that, if he perceived that the eternal salvation of his wife was endangered by this condition, he would have entirely refrained from such a union. It should also be noted the scandal that would be caused to their two sons, if they were to see their mother leading an immoral life. If Catherine refuses to relinquish the usufruct, she seems worthy of compassion, because otherwise, they would lack what is absolutely necessary for their honest sustenance. Since the salvation of souls is the supreme law in the Church, and since the Oratrix cannot, by any means, be removed from her initial purpose, it seems better to grant that dispensation, which, although it appears to contradict the words of the testator, adheres to the presumed will of the same. The material damage that would result to the rights of the sons appears to be negligible, almost nothing, if it is compared with the very grave scandal and the spiritual damage that would follow from the unfortunate example of an inconti-

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nent mother. Considering these arguments on both sides, the question was raised as to how the prayers of the Oratrix should be dismissed.

RESOLUTION. After considering the matter, the Sacred Congregation, on September 1, 1884, decided to respond: Negatively.

FROM WHICH THE FOLLOWING ARE GATHERED:

I. From both law and canon law, a woman who is transitioning to other vows loses whatever has been left to her by her husband; because, in doing so, she obliterates his memory and spurns his will.

II. Hence, from ancient civil law, a mother who enters into new marriages was deprived of the guardianship of the children of her former marriage, and was excluded from their care; for a grave presumption arises that she would neglect those children and expend the goods of the former marriage on the children of the second marriage.

III. In the case of the sons of the former marriage, to the extent that they are neglected, or suffer damage in their goods, by the mother, they would have no remedy under civil law, which considers the mother to have not transitioned to a second marriage, and therefore would not have lost the usufruct bequeathed to her.

Acta, Tom. XVII. fase. CO. 31.

[*Latin ed. p. 482*]

482 CIVITATIS CASTELLI, FUNERAL. On December 20, 1884. SUMMARY OF FACTS. In the year 1882, Theresia Pasqui presented herself at the Hospital of Città di Castello, which includes a hospital, an orphanage, and a maternity home, in order to spend some time with her daughter, who was in charge of the nuns who assisted the sick. There, the noble woman, not afflicted by any known illness, passed away at the end of her life. However, during her illness, she ordered that her body be transported to the town of Celle, near her family's ancestral tomb; and that the funeral be held in Città di Castello; for which she stipulated that a sum of 500 lire be paid, which she had reserved for her own funeral expenses. The Cathedral Church considered that a funeral of this nature fell within its jurisdiction (1), as if it were a matter concerning a stranger. Indeed, it is the custom, and one to which the canons strictly adhere, that for strangers and travelers who die in the city without having acquired a domicile there, the Cathedral Church takes the place of the parish church. Furthermore, the chaplain of the Hospital considered that it was his duty, and not that of another, to conduct the funeral for the noble deceased, according to a decree by the Apostolic Visitor Grazzoli, by which, in the year 1774, the church of the hospital was established as a parish church for the sick, the poor, the students, the servants, and all those residing in the hospital. In this further dispute, the Bishop, being consulted, issued a provisional de-

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cree, by which he decided that the funeral Mass should be celebrated by the clergy of the hospital in their own church, while the procession of the body from the hospital to the city gate should be carried out by the hospital, as the Cathedral (1) The funeral, concerning which the question arose, is to be performed for strangers and travelers: therefore, it is limited to the funeral Mass and the procession of the body up to the gate of the city; so that the funerals of strangers and travelers in the city should be completed by the Cathedral parish priest, preferably to others in the city. It should also be noted that, according to no legal principle, funerals are within the jurisdiction of the Chapters of Cathedrals.

[*Latin ed. p. 483*]

In Città di Castello, the matter became exclusive. However, since the decree did not favor either party, an appeal was made to the Sacred Congregation of the Council. Synopsis of the Discussion. It was noted that funerals should be considered as a whole, and that the right to perform funeral rites should not be separated from the right to bury the deceased body, according to the Sacred Congregation of the Council in Vegliano, July 15, 1882, §. Indeed, and there, Text in chapter 6, and in chapter 10 concerning Burial; Vecchiotti, Institutes of Canon Law, Book 3, chapter 5, § 61, in note. Therefore, if someone chooses to be buried in a church exempt or in another parish, then it is proper for the parish priest of the deceased to bless the body before it is taken away, to chant the antiphon "Exultabunt," according to the Sacred Congregation of the Council in the case of December 20, 1828, concerning Parochial Rights, as it is not permitted for anyone to remove the body from the house or from the place where it has been placed by the will of the family, without the consent of the proper parish priest: who, indeed, is obligated to accompany the deceased to the church where he is to be buried; Vecchiotti, op. cit. Sacred Congregation of Rites, in Session, allocution of June 22, 1685, paragraph 4. But to lead the funeral procession, to carry the Cross through the streets, and to celebrate the Office and Mass for the repose of the soul, pertains to the church where the burial takes place; Sacred Congregation of the Council in Viterbo, September 16, 1826: to which church the bodies must be brought directly, and not first to the parochial church; Sacred Congregation of the Council in Forlì, January 26, 1833, to the first Question. And since today burials in churches are forbidden by civil law, it is equally certain that the church which previously had the right to bury, now exercises that right in the cemetery; Sacred Congregation of the Council in Arimino, concerning Funerals, June 16, 1827, to the 4th and 5th Questions. Therefore, after the funeral rites have been completed, the church where the burial takes place, even if it is a regular or exempt church, can, without the intervention of the local parish priest, proceed in procession to the tomb, wearing the stole and carrying the Cross, and complete the funeral ceremony there; as the Sacred Congregation of

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the Council decreed in the case of an Order of Preachers, according to Vecchiotti, § 62, in note, op. cit. However, although these things are certain and of common law, they can nevertheless be modified by an agreement between the parties. JURA CAPITULI CATHEDRALIS.

[*Latin ed. p. 484*]

484 In CIVITATIS CASTELLI, it is equally clear, both by the will of the deceased and by custom, as is stated in Vecchiotti, I, chapter, section 60, at the end. And concerning custom, how much weight it carries in moderating common funeral law, it is taught in Faventina Praeeminent, and Funer. of April 11, 1761, section 5. Therefore, concerning how much should be conceded to either common law or custom, or how these should be reconciled with each other, the Sacred Congregation will easily understand from the arguments presented by the parties below. Furthermore, the Chapter of the Cathedral, in order to defend its thesis, speaks at length to demonstrate that the hospital is not a parish: for, it says, here there is neither the election of a pastor according to the canonical form of competition, nor perpetuity, nor its connection with other parishes of the city, nor, finally, territory, and therefore not those things which are truly required to constitute a parish. Nevertheless, despite this, the Chapter readily concedes that the chaplain of the hospital has parochial rights concerning the nuns, orphans, and exposed girls, but as if by privilege and restrictively. Therefore, it would not have parochial rights concerning the sick who are staying in the hospital, either temporarily or for a short time, for the purpose of being cured. And this is intended to be understood from the very decree of Gazzoli, where parochial rights are granted to the chaplain privately with regard to the sick, and all those who reside in the aforementioned hospital. But having briefly passed over the general question, and dealing specifically with the right of burial, the Chapter maintained that there are several arguments or indications that suggest that the chaplain does not have the right, as a pastor, to bury the bodies of the deceased in the hospital. For the Bishop observed that if the family of the deceased wishes, and even if the deceased has not made any arrangements, the body could be taken to its own parish for burial, after paying a single scudo in favor of the charitable institution, which is, however, given to those who serve in the hospital. Concerning this, the Chapter observed: if the bodies can be taken out of the hospital at the will of the relatives, then this is not their true parish; since each person, but not...

[*Latin ed. p. 485*]

In CIVITATIS CASTELLI, one may choose a burial place outside the parish, and this is only permitted in the case of a minor, for whom the father chooses it, as stated in chapter VI concerning burials. If the *scutum* [burial tax] is paid, this fourth [tax] pertaining to funerals cannot be

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considered in relation to the proper parish; for it is not a canonical portion of the funeral expenses, but a fixed tax; furthermore, it is not paid to the chaplain or the church, but to the ministers of the hospital; and therefore, as stated by Ferraris in *Quarta funeraria*, number 7-16, we are not dealing here with a canonical fourth. Therefore, it would be more appropriate to say that here an offering is made to the pious house, as a token of gratitude. If funeral services are celebrated for the deceased in the mortuary of the hospital, this should be considered as something private and permitted only by the tolerance of other parish priests; and it is permissible to suspect this from the fact that solemn funerals have never been celebrated in the public church of the hospital. Finally, the Chapter, concerned with the matter, enumerated several cases in which the deceased, having died in the hospital, received a funeral and burial elsewhere. Given these circumstances, the Chapter decided that the hospital has no right to a funeral for those who are temporarily ill; nor, therefore, for the deceased Pasqui; indeed, even more so, because she was wealthy and had been received in the hospital by chance; and therefore, she could not be considered to have a right to this service as a temporary resident. Since she had come to the city for a reason that was not permanent, but momentary, she cannot be considered to have acquired a domicile or quasi-domicile here; Ferraris, *de matrimonio*, § 2. To those who object that this woman chose a burial place in her own parish of Celle, and thus excluded herself from the right to a funeral in the Cathedral, the same Chapter responded that this does not apply to the association of the body until it reaches the gates of CIVITATIS CASTELLI. For, according to ancient custom, external parish priests cannot enter the city to collect the bodies of their parishioners; but the hospital chaplain does not have the right to leave the pious house to solemnly conduct the funerals of the deceased in the hospital, because the practice is the opposite. Therefore, it was concluded that the Marchioness's association should always be considered within the Cathedral, even in the case of a funeral Mass. For she was a pious woman.

[*Latin ed. p. 486*]

486 In Città di Castello, it was desired that, although the burial might take place in the parish of Celle, the funeral Mass should nevertheless be celebrated in Città di Castello. And since no one was specifically designated for this, it is to be understood that this pertains to the Cathedral, by right. However, the Chapter considered it necessary to address what follows, namely, that the testimony actually indicates that the Church of the hospital was designated for this funeral; for there is neither word nor mention of this in the will; moreover, the testator expressed what he wished. RIGHTS OF THE HOSPITAL. On the other hand, the Chaplain considered it superfluous to discuss the parochial right, which he has always exercised over the nuns, the girls of the hospital, whom he also marries, and

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also over the sick in the hospital; but rather, he directed his argument to demonstrate, in particular, the right of the hospital concerning the funerals of the deceased. And he believed that this could be clearly deduced from the very decree of Gazzoli, where the Church of the hospital is erected and constituted as a parish for the sick, and for all those residing in the hospital. The word "residing" eliminates all doubt; for "residing" or "commorare" indicates a temporary dwelling, even if brief, and is very different from the word "habitare," which indicates a longer period of stay. Hence, Cicero says: "The nature of 'commorare' offers us a temporary lodging, not a permanent dwelling." This philological meaning also corresponds to the legal usage; for in the Code, or Legislative and Judicial Regulations, published by Gregory XVI on November 10, 1834, in § 428, it is written: "The place of 'commorare' is that in which the accused has a temporary residence." Therefore, the hospital would seem to be the proper parish of those infirm who reside there, and consequently, also the proper place for the funeral, according to chapter 3 on burials, in Volume VI. Furthermore, custom is relevant, which, as is well known, is considered the best interpreter of the laws. If the Chaplain generally performs funeral services over corpses, and accompanies them to the cemetery, it is a gratuitous assertion to say that this is done with the consent and tolerance of the parish priests; and the one who makes this assertion must prove it.

[*Latin ed. p. 487*]

CIVITATIS CASTELLI 487, proof from Law 2 ff. concerning proof. While it would seem more likely that the right of burial is exercised by force, the Gazzoli decree appears, at least interpretively, to grant this right to the hospital. However, a custom, which, as mentioned above, has persisted from time immemorial based on a just title, namely, the aforementioned decree, more likely derives from this, and is observed in good faith; I say, this custom, through the means of prescription, establishes a right; - Ferraris, *De Consuetudine*, number 26 - and imposes a positive servitude - Reiffenstuel, *Ad Titulum De Praescriptione*, § 14; Ferraris, *De Servitute*, number 30 - which is acquired through the act of exercise - Law Si quas 1, Law Si aquam 2, *Codex De Servitutibus*. It avails nothing to say that funerals are celebrated privately, as if in a mortuary cell. Indeed, even these, although perhaps less elaborate, are still true funerals. If, however, they are performed without solemnity, this derives from the fact that in the hospital, where approximately 60 infirm individuals are present daily, sometimes several people die in a single day, who are ordinarily poor; therefore, it would be impossible to have parental ceremonies for each individual. Furthermore, from the fact that funerals are ordinarily celebrated privately, it does not, it seems, follow that solemn ceremonies cannot be performed. Rather, there is a presumption to the contrary; provided that, in both fact and law, the funerals of the poor are not distinguished from those of the

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wealthier, but rather, whoever is able to perform the latter is also able to perform the former. And this presumption, favoring the hospital, causes the burden of proof, that is, to demonstrate that the pious institution does not have the right to perform more solemn funerals, to be transferred to the Chapter. Whenever a presumption of law exists in favor of one party, the burden of proof is transferred to the other, chapter 2 concerning theft, section VI. Furthermore, the Chapter strives to prove its claim, stating that these solemn funerals have never been celebrated in the hospital church. But this would be a negative argument, and, as everyone knows, prescription does not apply to negative claims; or rather, it begins only through a prohibition against something being done, and subsequent acquiescence in the prohibition; Law, following §, from the sections concerning usage: Law, following §, from the sections concerning servitudes.

[*Latin ed. p. 488*]

488. In Città di Castello, the urban jurisdiction. This is not verified. Furthermore, the Chaplain presented to the Chapter a testimony signed by two men and six nuns of the hospital, in which they affirmed that they had witnessed funerals being held in the hospital for several sick individuals who had died there, at the expense of those individuals or their relatives. And two ancient documents, fortuitously discovered in the hospital archives – although they do not contain a register of funerals – corroborate this same point; in the first, dated in the year 1827, it is stated that the parish priest of San Aegidio requested permission for a funeral for one of his parishioners who had died in the hospital, and that funeral honors were held there, in the church; but the administration of the hospital, which at that time consisted of four Canons and the Cathedral Provost, declared that the priest had no right to hold the funeral there. In the second, dated January 3, 1842, it is stated that a certain Moretti, who had died in the hospital, received a funeral there, but that no one objected or requested anything. However, it is conceded that funerals are not frequently held in the church of the hospital for those who die there, and this is due to multiple reasons. Firstly, those who die there are usually of a lower social standing; those who are in a better condition, if they die there, usually choose to be buried elsewhere, a custom that stems from an old and now obsolete reason. Indeed, as early as the 1840s, before this was ordered by the civil authorities, the administration of the hospital had decreed that burials should take place elsewhere than in the church; but many at that time considered it improper to be buried in a separate cemetery; and thus arose in the city an aversion to having funerals in the hospital; and thus is explained the lack of solemn funerals there. If it is added that, not only due to the choice of the deceased, but also due to the will of the families, the bodies of those who died in the hospital were often able to be buried elsewhere, the Chaplain replied that, seeing the aversion of the citizens to

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funerals in the hospital, he willingly allowed the bodies to be removed, in order not to incur the displeasure of many. However, he always charged a fee; and this practice...

[*Latin ed. p. 489*]

The matter of the cemeteries of 489 small parishes cannot be dismissed lightly. For if this practice cannot strictly be considered a right pertaining to the fourth part of the inheritance, nevertheless, it is some indication of a hospital's prerogative: namely, that the burial is not granted unless the prescribed fee is paid, which implies that the right to bury belongs properly to the hospital. Furthermore, from the fact that the Church, or even a hospital, as stated in *De paroch. discept. 23*, does not have the right to demand the fourth part of the inheritance; it does not follow that this Church or hospital does not have the right to bury its members, as Ferraris states in *Quarta num. 8*. And this was intended to be said in a general sense concerning its own right; but in a particular case, Theresia Pasqui considered that the Cathedral had a stronger claim to this right. Indeed, according to the testimony cited above, two men, and these were witnesses to the will, and six nuns, among whom was the deceased's daughter, confessed unanimously that the noble woman, both before and after the will, expressed her desire that the funeral be held in the hospital church, and that her body be carried to the family tomb, so that she might die in the city. From this, it was observed that once the right to perform the funeral rites has been established, the right to associate the body with the burial must also be established, which right is nothing more than a part or consequence of the former. But the Bishop held a contrary opinion, and considered that the funeral Mass should be offered to the hospital, while the association of the body should be granted to the Cathedral. The reason for this decree, he stated, was that since the funeral ceremony was to be celebrated in the town of Celle, and funerals are one thing, the funeral Mass in the city should already be considered a simple act of devotion, or an act of generosity, offered by the deceased's family to the Hospital, as a token of gratitude; from which, however, no right arises for anyone. But the association should be performed by the Cathedral; because, the Bishop said, there is no reason why the chaplain should conduct the funeral rites of the deceased in the hospital, if they are to be transferred to other churches; for the jurisdiction of the chaplain cannot extend beyond the limits of the hospital; and because the Bishop supposed that...

[*Latin ed. p. 490*]

490 Città di Castello, although it stated that the right to perform burials, or at least solemn burials, did not belong to the hospital. With these and other points noted, the purpose was to resolve the doubt as to whether the funeral Mass and the association of the body belonged to the Cathe-

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dral in this case. RESOLUTION. The Sacred Congregation of the Council, after deliberation, on December 20, 1884, decided to respond: - The decree of the Bishop must be confirmed. FROM WHICH THE FOLLOWING ARE GATHERED. I. It appears that in common law, a derogation has occurred through custom, whereby the hospital chaplain cannot leave the pious house to associate with bodies, and external parish priests cannot enter the city gates to remove the bodies, even of their own parishioners. II. For in common law, it is the duty of the parish priest to remove the body from the house, to conduct the funeral, to celebrate the funeral Mass, and to consign the body to the earth. VERCELLI. OF THE INHIBITION AND REHABILITATION. On July 12th and December 20th, 1884, the Reverend Joseph, born in the Vercelli diocese, aged 56 years, having been attached to the Congregation of St. Philip; having left it, for reasons of health, in 1864, to perform the duties of chaplain at the Hospital of St. Spirit until the year 1878; at which time he spontaneously sent notice of his resignation. In the month of August of the same year, the Bishop of Vercelli forbade him to celebrate Mass and to perform any spiritual ministry, and ordered a woman to be dismissed from his service. SUMMARY OF THE CASE.

[*Latin ed. p. 491*]

VERCELLI. He has served for 491 years; but not immediately, so that the calumny against him and his female companion might easily be extinguished. From the month of May 1880, this female companion has separated from the cleric, and there remains no connection between them; however, the Ordinary has denied him rehabilitation, although he has humbly requested forgiveness several times and admission to spiritual exercises. Now, he is seeking rehabilitation from the Apostolic See, without being obliged to leave his place of origin, lest he appear to be fleeing the punishment of exile. The Archbishop of Vercelli, when questioned according to custom, stated that the cleric belongs to the Diocese of Biella, and that he had forbidden him to say Mass and to hear the confessions of the faithful because of his familiarity with a girl, whom he had resisted removing. The cleric's way of life was not a good example to the inhabitants of his town, and therefore he had advised him to return to his own Diocese of Biella, where he was educated and promoted to the sacred orders.

A SYNOPTIC SUMMARY OF THE CHARGES AGAINST THE CLERIC. It is forbidden by law for clerics to dare to live with women about whom suspicion may arise, or to presume to maintain any custom or familiarity with them. Thus, among other things, it is expressly stated in chapters 1, 2, and 3 concerning the cohabitation of clerics and women, and also by the Council of Trent, session 25, chapter 14: "The Holy Synod forbids all clerics to keep concubines, or any other women, about whom suspicion may arise, in their houses, or outside of them, or to dare to have any familiarity with them." Clerics who act against this are called concubinaries, even if they

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do not admit the shameful sin in fact, chapters 2 and 3 of the aforementioned title, and as such they ought to be punished, as commanded by the Council of Trent in the aforementioned passage: "Clerics who do not hold ecclesiastical benefices or pensions, but who, through the persistence and quality of their crime, are contumacious, shall be punished by the Bishop himself with the penalty of imprisonment, suspension from the Order, and incapacity to obtain benefices, or in other ways, according to the sacred canons."

[*Latin ed. p. 492*]

492 VERCELLI. From these aforementioned observations, it is clearly deduced that the priest Joseph was justly and deservedly prohibited from the sacred ministrations, since it is certainly known that he was involved in a matter concerning concubinage, which, according to the judgment of the sacred canons, constitutes the crime of concubinage. And it does not seem necessary to demonstrate this further, both because the priest offered no objection to the merit of said prohibition, and because it is irrelevant in this case whether the priest himself had a disgraceful relationship, as has been reported, or did not have one. Apart from the infliction of the just penalty, it seems easily demonstrable that the requested rehabilitation should now not be granted. For he who has committed such a grave offense as to deserve to be removed from even the handling of sacred things, cannot certainly be absolved, unless after a manifest amendment of life, and also after a suitable and fitting satisfaction. This is commonly found instilled in the law, and especially in chapters 26 and 28 of Distinct. 50, Causes 24, question 2, chapter 2, and chapter 5 of the section on Damnation, Causes 27, question 1, chapter 1, "Devotam," 27, chapter 11 "Eoe Uteris" concerning Constitutions, chapter 3 "de Officio Iud. Ord." These can be concluded with the statutes in Causes 11, question 3, chapter 62 "Tunc vera" and chapter 88 "Plerumque contingit." Therefore, "the causes must be considered and then the bonds imposed," and the power to absolve must be exercised. It must be seen "what preceded the fault, and what repentance followed the fault..." We must absolve those "whom we know to be our authors through the awakening of grace." But in this matter, either a manifest amendment of life or a suitable satisfaction, as reported by the Ordinary of Vercelli, seems to be lacking. Given this, no one can fail to see that it is of no benefit for the petitioner to repeatedly petition the Archbishop to be admitted to spiritual exercises, and to declare that he is now prepared to do so. He might well be deservedly answered, according to what is stated in chapter 55 "Nonnulli" of the section on penance, Distinct. 1 - there - "Nonnulli" "therefore demand penance, so that they may immediately receive the communion." These do not so much desire to be absolved, as to bind the priest. They do

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not cleanse their own conscience.

[*Latin ed. p. 493*]

VERCELLEN. 493 » To a priest, it is commanded: "Do not give that which is holy to the dogs..."

THINGS FAVORABLE TO THE PETITIONER. The case was weighed, but it was found that the petitioner, the priest, was not prohibited from the sacred ministry for any other reason than excessive familiarity with a certain woman, as is evident from the account of the Archbishop himself. Furthermore, this cause for concern ceased entirely from the beginning of May 1880; therefore, since any and all dealings with that woman have been completely discontinued, and indeed have been so for four years, there can be no doubt about the true amendment of the aforementioned priest. Given this situation, it clearly follows that his requested rehabilitation cannot be denied. For when contumacy is removed, the censure must also be lifted; Cap. Multi Caus. 2 q. i. Cap. Concerning appeals, cap. Medicinal sentences concerning excommunication, in 6, cap. 'From the letters concerning the statutes - there - « Since it is both according to canon law and our custom that he who is deprived of the Eucharist due to contumacy, if he exhibits sufficient amendment, should obtain restoration: we command that you admit the aforementioned Master to your communion in the main assembly, now that he is humbly obeying your statutes.» And this is stated unanimously by the Most Reverend Fathers. Thus, among others, Suarez, on censures, disputation 25, section 1, number 3: «Censure is primarily intended to correct contumacy and to lead a man away from sin, and therefore it cannot have any other limit than until he departs from that [sin].» P. Thesaurus de poenis ecclesiae, page 1 V. Dispensation and absolution - there - «Absolution from censures or medicinal penalties cannot be unjustly denied to a penitent and requesting person.» The petitioner emphasized these principles of law all the more strongly, because the calumnious insinuations of some, which had moved the Archbishop to inflict punishment, have completely vanished in fact, and thus the innocence of himself and the woman has become more clearly evident. Indeed, he stated that it is beyond doubt that he received that woman into his house,

[*Latin ed. p. 494*]

494 VERCELLI. For it was there that he intended to found a pious institution, adapted to the needs of all the poor, to which that woman had already given a name, and to which he was to be appointed as its head. He affirmed that if he did not immediately comply with the Archbishop's orders, it was so that calumny might not be confirmed. But whatever the truth of the matter may be, since it is clear that the aforementioned Orator has genuinely reformed himself, and that the rehabilitation was just, there seems to be no reason why the aforementioned Orator should be removed

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from the Diocese of Vercelli. Indeed, no cleric, even if he is a foreigner, can be excluded from a diocese, even if it is not his own, simply because he is not registered there. This was expressly stated by the Holy Congregation of Extraordinary and Regular Affairs, by order of the Most Holy Pope Gregory XVI, as can be seen in the *Collectanea in usum Secretariae S. C. EE. et RR.*, page 97, where it is also declared that any practice contrary to this lacks any canonical foundation and is contrary to the principles of ecclesiastical law. This declaration should, all the more, have force in this case, if one considers the arguments that the Orator puts forward in his defense. First of all, he states that he was not only born in the town of Crescentino, where his family is numerous, but that he has also permanently resided there, except for a period of 17 years, during which he lived in Biella among the members of the Oratory Congregation. From this, he concludes that, with regard to the Diocese of Vercelli, he cannot be considered a foreign cleric; for although he was ordained in Biella, he nevertheless received his orders there not as a subject of the Bishop of Biella, but rather as a member of the aforementioned Congregation, to whose Superior he was subject. Furthermore, he states that, with the help of divine grace, he has always led a life of a priest in his town of origin, and that he has only been prevented from exercising the sacred ministry by the malicious insinuations of some people. He also presents a laudable testimony from a secular group dedicated to charity, and its president, which shows that the Orator is zealous in religion and piety, and that he has always been attentive to the needs of the sick.

[*Latin ed. p. 495*]

VERCELLI. In the year 495, [the city] suffered greatly, especially when, in the year 1867, the Asiatic disease spread, and in the year 1872, the disease of smallpox was widespread. The present Syndic [official], who testified on July 17, 1883, stated that the Orator [candidate] lives a life befitting a priest, and that his conduct makes him pleasing to all. Brother Benignus, of the Congregation of Capuchins, testified that for many years he had heard the Orator's confessions, and that he had frequently administered the Sacraments to him, giving the best of examples. The Bishop himself of Bugellensis commended him; and he was not to be burdened with the condition of leaving the Diocese of Vercelli; because the Orator, due to his infirmities and his advanced age, wishes to remain in his home, with his parents, in his homeland. With these things stated, the purpose was to resolve the following doubt: Whether and how there is a place for rehabilitation in this case. To this doubt, the response was given on July 12, 1884: "Deferred to the next meeting." Before this question was raised again, it was necessary to ascertain to which Diocese the priest Joseph was canonically assigned. The Bishop of Bugellensis, when asked, replied: that, according to the records of his Curia, the priest Joseph had been promoted to the

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tonsure and other sacred Orders, as a member of the Oratory, with the granting of an ecclesiastical title; but that it did not appear that the same priest had been assigned to the Diocese of Bugellensis. The Archbishop of Vercelli, confirming the aforementioned, added: that he had always been certain that the priest Joseph belonged to the Diocese of Bugellensis; for he entered the Congregation of the Oratory there, and received the sacred Orders there. Furthermore, the same Ordinary stated that he had seen no document concerning the same priest, and that there was no record in the Curia of Vercelli that referred to him. Regarding this matter, he concluded that the priest was still a member of the clergy of the Diocese to which he was originally assigned, and from which it was not established that he had been removed.

[*Latin ed. p. 496*]

496 VERCELLI. A Synopsis of the Dispute. From these accounts, it appears that the priest Joseph was ordained without dismissal letters and testimonial letters from the Vercelli ecclesiastical court. However, having raised the question of testimonial letters, without which someone can sometimes be ordained – as seen in Lucidi, vol. 1, pages 193 and 196, in the new edition; and in Honorantes, chapter 9, note 10 – it is nonetheless clear that no one can be ordained by a bishop other than his own ordinary without the proper dismissal letters; Council of Trent, Session 6, on reform, chapter 4; Constitution *Inter innocentes* of Innocent X, § 7. Indeed, if this were to happen, the Council of Trent, Session 23, chapter 8, on reform, decreed: "He who confers orders, and he who receives them, shall be suspended, as long as it appears to his proper ordinary to be expedient." Thus, it was formerly said in ancient law that such an ordination was null and void, that is, with regard to its exercise. From this, it follows that the priest Joseph received ordination illicitly, unless the Congregation of the Oratory enjoys a special privilege in this matter, as stated in Honorantes, chapter 41, number 11: "Similarly, the Fathers of the Congregation of the Oratory of Saint Philip Neri, both in Rome and in Naples, although they are considered to be secular priests, and indeed are such, nevertheless have an indulgence by which they can promote their students to any of their orders from the local ordinaries, in whose diocese they have a domicile, without letters of dismissal from the bishops of their origin." Regarding this matter, it may reasonably be presumed that this privilege was truly granted to the Fathers of the Oratory, and that it continues to be in full force in the house in Biella. It cannot be supposed that a bishop would so confidently ordain a foreigner, unless he knew, either by custom or from the very documents of the privilege, that he had the power to do so in every way. With these established points, something remains to be said

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about the state of the controversy, concerning the following point:

[*Latin ed. p. 497*]

VERCELLI. The Vercelli Prelate, in the year 497, adheres most strongly to the law concerning suspension, namely, that the priest Joseph, subject to him, is not [to be considered] his. For, if it is affirmed that this priest does not belong to the Vercelli Diocese, but to Biella, where he was ordained as a member of the Oratory, then the suspension imposed upon him ought to be considered a simple prohibition, or a provision employed by the Vercelli Curia to remove a troublesome guest, and it could more easily be admitted. But if this is not proven, then this law concerning suspension would take on the nature of either censure or an ecclesiastical penalty, and therefore it could not be maintained, unless he had merited it through a grave and certain fault. Therefore, it is of great importance to define this point, namely, whether the priest Joseph is incardinated in the Vercelli Diocese. Indeed, for one who affirms this, the matter is settled, and the law in force applies to members of simple religious congregations. For, although they may have lived for a long time and have been ordained outside their own dioceses of origin, they are nevertheless, by virtue of their institute, compelled to return to that diocese, and they cannot be rejected by the Bishops of their dioceses of origin, as was defined by the Sacred Congregations and the Holy Roman Pontiff in the *Dubia super s. Ordinatione* of May 6, 1864, question 4; and therefore, as Emus Bizzarri notes there, "it is not in conformity with the law for those prelates to act in such a way as to refuse to receive into their dioceses members of any institute of simple vows who previously resided in those same dioceses before their profession, and who are then dismissed from the institute or congregation, or who obtain a dispensation from those same vows, only because they have made their profession in some other institute." (1) In this regard, it would seem that the priest Joseph, having left the Oratory, is by law incardinated in his diocese of origin. But if the contrary is observed, that this priest was ordained without any dismissal from the Vercelli Curia, it could be answered that the ecclesiastical law, expressed in the cited document, chapter 8, session 23,

(1) See Volume VI, 498, and Volume XIV, 392, 398; where we have collected and written more concerning testimonial letters and concerning the causes for which a Bishop becomes proper. 32.

[*Latin ed. p. 498*]

498 VERCELLEN. He orders that, even in the case of illegitimate ordination, the cleric should be assigned to the proper Bishop, and should be subject to him. But, on the other hand, it must be considered that the Congregation of the Oratory is in all respects subject to the Ordinary of the place where the house exists, except only for those matters concerning its Institute, or those about which the Constitutions speak, so that, among

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other things, it was defined by the Sacred Congregations and the Most Holy Fathers in Lima, together with the Constitution of Benedict XIV, issued on January 21, 1758; and again in Messana, with the Apostolic Letter of Leo XII, dated January 30, 1827. Indeed, from this, it seems that some indication or argument can be derived, that those who enter the Oratory are assigned to the local diocese, and make that Bishop their own. For, since they are in all respects subject to a Bishop, they would seem to become fully subject to him. This is to be held more strongly, if one considers that the Congregation arose and explained its rights, previously to the Constitution *Speculatores*, since, when acquiring a proper Bishop by reason of domicile, not all those things were required which are necessary today; Sánchez de matrim, book 3, disputation 23; Tournelis, *Tractatus de dispensationibus matrimonialibus*, in *Speculum*, part 1, chapter 13; and the Doctors conclude from the words "Cum nullus de tempore ordinat," in VI. Therefore, it could be considered sufficiently effective to assign to the Congregation which is in all respects subject to the Ordinaries according to the Apostolic Constitutions. This reasoning, it seems, is even more confirmed by the fact mentioned above, namely, that the members of this Congregation, although born in another diocese, can nevertheless be ordained by the local Bishops without dispensations. This is clearly understood in the hypothesis that the clerics of the Oratory are assigned to the diocese where the house exists, and become its own; in which case, dispensations are not necessary, but not otherwise. For it is not likely that ecclesiastical law would, on the one hand, establish that clerics of the Oratory are fully subject to the local Bishop, and can be ordained by him as his own; and yet, on the other hand, would allow the same clerics, whenever...

[*Latin ed. p. 499*]

VERGELLEN. 499. If they should presume to depart, which can easily be done, and, according to their own judgment, send a messenger to the diocese where they were ordained, and if, in the diocese of their origin, they establish themselves as if they were their own, the Bishops are bound by law to receive them as their own. Perhaps the example of the congregations of simple vows can be cited. Indeed, the clerics of these congregations, when departing from their Institute, have the right to return to the diocese of their origin, according to the law, so that they may be received by the Ordinaries as their own; but these clerics are not entirely subject to the Bishops of the place; moreover, those ordained in their Institute cannot be dismissed except with the dismissal of their own Bishops, as was decreed in Treviso, cited, at question 3, and as Emus Bizzarri notes there. Rather, if one may reason analogously, perhaps a rule similar to that which applies to those in the solemn vows would be suitable. For these can be promoted to the orders without the dismissal of the Bishops of their origin. But those who depart from their Religion do not have the right to be received by the Bishops of

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their origin, nor are the Bishops obliged to receive them as their own, as is clear from the decree of the Sacred Congregation of the Council, De apost. et eiectis, published on September 21, 1624, by the order of Urban VIII; and Bizzarri cites this in Treviso, cited. Lucidi, volume 2, page 35, new edition. It seems to be a well-established principle in ecclesiastical discipline that Bishops are not obliged to receive any clerics in whose ordination they themselves did not participate. This, indeed, appears to be in accordance with justice, and is consistent with the very concept that assimilates ordination to the generation of spiritual sons; Pignatelli, Consult. 158, volume 8, number 43. And it is very consonant with ancient discipline. For then, as Vecchiotti writes, volume 3, pages 26-27, "there was no consideration of origin or domicile, and the Bishop who ordained was immediately the one who 'enrolled' someone first in the clergy..." He adds, "To this are referred the examples of the Origen, Jerome, Augustine, and other illustrious men..." And although, guided by experience, other rules have been adopted today to restrain abuses; nevertheless, the canonical law still diligently avoids burdening the Bishops with those priests whom...

[*Latin ed. p. 500*]

500. He did not permit [the promotion] himself, so that those who were illegitimately ordained without dispensations might be subjected to suspension at the discretion of their proper Ordinary. And this, even though these [individuals] were promoted without fault or deceit, but out of ignorance; as is stated in the words of the Council of Trent, session 23, chapter on reform, and is confirmed by the decrees of the Holy Office, given in Valva, or Salmonensi, on March 22, 1732, and in Ascoli on February 7, 1732. Therefore, those who are illegitimately ordained are subject to their Bishop, especially concerning punishment, and also so that the Ordinary may, if he wishes, retain them with him; but not so that he should recognize them and necessarily accept them. Furthermore, this also contradicts the rule established by the Council of Trent in chapter 16 of session 23, namely: "that no one shall henceforth be ordained who is not assigned to that church or pious institution for whose necessity or benefit he is taken." If this were conclusively proven, it would be said that the priest Joseph is subject to the Bishop of Biella, since he entered a house of the Oratory in that diocese, and there he was ordained without the dispensations of the Ordinary of Vercelli, from whom he would therefore appear to be an outsider. With these points raised on both sides, the purpose was to resolve the doubt as to whether and how there is a place for rehabilitation in this case.

RESOLUTION. The Sacred Congregation, after deliberation, on December 20, 1884, decided to respond: - According to the prudent judgment of the Archbishop and with the understanding of the Secretary.

FROM WHICH THESE CONCLUSIONS ARE DRAWN:

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I. From ancient law, that clerics should not cohabit with women concerning whom there is any suspicion, nor should they observe any custom or familiarity with them, so that those who act against this are considered to be concubinaries, even if they do not admit the sin.

II. Those who commit such a grave offense can be punished by the Bishops through prohibition from the sacred ministrations, if they do not have pensions or ecclesiastical benefices.

[*Latin ed. p. 501*]

VERCELLI. 501 III. Nevertheless, the fault of contumacy must be joined to it: for no one is to be excommunicated for the mere crime itself, but only for contumacy, arising from such a crime; because contumacy, as it were, completes the cause for censure. IV. Regarding this, if the contumacy ceases, for which the penalty was inflicted, and if the guilty party gives due satisfaction, absolution must also be granted from the censures or medicinal penalties, and the restoration of rights must be made. V. It is understood from the decree (1) that a cleric cannot be excluded from a diocese, even if it is not his own, because he is not attached to it; thus, a contrary practice lacks a canonical foundation. VI. A priest, living an upright life in his diocese, after the contumacy has ceased, and who was born in the diocese of Vercelli, but received only the sacred orders in the diocese of Biella, is to be considered worthy of restoration; nevertheless, this is left to the prudent judgment of the Ordinary.

SYRACUSE, regarding the reduction of the canon. On December 20, 1884, the Knight Caietanus Perrotta presented to the Most Holy Prince: in the year 1865, the property of Saint Mary was to be included in the census, for which the canon is paid to the Archdeacon of the parish church of Lentini. The canonical fees have been paid for twelve years.

COMPENDIUM OF THE FACTS.

(1) The decree promulgated by order of Gregory XVI: in this serious matter, no novelty can arise, and wishing to ensure that external clerics behave properly, it states: "The Most Holy Father has been informed of the danger that can arise in the examination; and, with the advice of some Fathers, he could not but foresee the greatest basis for this, because if the dioceses do not favor them, other removals of clerics may be suggested."

[*Latin ed. p. 502*]

502 At that time, the authorities of SYRACUSANA summoned the aforementioned advocate and requested that he participate in the public auction of the aforementioned property, so that the just dues would not be diminished, which certain wicked men were attempting to accomplish. The same advocate promised the ecclesiastical official a fair reduction, so that the

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dues would not be excessively increased during the auction. Indeed, the dues were greatly increased, due to the efforts of the advocate; however, he was unable to obtain the promised reduction from the then-Vice Rector, now deceased. Therefore, he is now requesting from the Apostolic See a reduction of 716 *libellae* in the annual payment of dues, especially due to public taxes. Regarding this matter, the Archbishop reported on July 24, 1883, that he did not recognize the promise of a reduction in dues made by the deceased Francis to the advocate. As for the petition of the knight Perrotta, now deceased and represented by his sons, he stated that it was exaggerated, as evidenced by the expert appointed by Perrotta himself. The property is capable of significant improvements; however, even after these improvements are made, the dues are not increased. It is said that only one part of the aforementioned lands, which have already been improved, is sufficient to pay the full amount of dues.

Dispute Regarding the Dues. It seems that justice and equity both suggest that the dues should be reduced. Justice, because, according to Perrotta, a certain agreement appears to have existed between himself and the Vice Rector, by virtue of which it was agreed that if the dues were excessively increased during the auction, they should subsequently be reduced to a fair level. Since this has indeed happened, because the dues paid by Perrotta are almost double the true value of the property, it is certainly a suitable case for a reduction in dues. For nothing is more fitting for human faith than to observe what has been established by mutual consent, *L. 1, ff. de pactis*. *C. Iuris gentium §. Praetor erit ff. ead. Cap. 1 Antigonus de pactis* - there - « *inita pacta suam obtinent fir* ».

CANON SHOULD BE REDUCED.

[*Latin ed. p. 503*]

SYRACUSANA 503: "Let agreements be observed." The Sacred Congregation of the Council declares this in Vigilien, Inhibition, August 14, 1880, §. Furthermore, the Rota, in six hundred decisions, and especially in decision 253, number 9, part 1, of the Recueil, has ruled. It is irrelevant that the person with whom Perrotta entered into this agreement has since passed away, for it is well known that a change in persons does not alter the nature of the obligation, according to the text in L. 2 ff. concerning inquiries, obligations, Constant, Vol. decisions 269, number 7; Rota decisions 46, number 24, part 5; and decisions 413, part 9, Recent. The successor is bound by the fact of the deceased, as Canon Piaconi states. The unfortunate mendicant cleric, in dist. 93, C., speaks of a renunciation. See the Glossa in Cap. To this, in the note on the office of the Archdeacon, the words "Examine" are added. But not only justice, but also equity, seems to require a reduction in the stipulated sum. Indeed, it is unjust for someone to enrich themselves at the

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expense of another; according to the text in L. Concerning conditions, and L. "If I and Titus," etc. If this is requested, it certainly becomes a disgrace to the Church, which is the mother and guardian of justice and equity; Barbosa, in Cap. "With the beloved," number 17, title on easements and sales; and the Sacred Congregation of the Council, in Senogallien, Transactions, May 8, 1819, §. Therefore, if there is an injury in the establishment of a canon for the emphyteusis of ecclesiastical goods, a remedy must certainly be provided, according to L. 2, C. concerning rescission of sales, so that the contract may be reduced to equity; Constant, ad Statut. Urbis, annotations, 46, number 162; Sanch. de laes., part 2, chapter 8, number 11; Rota decisions 250, number 1, before Lancetta, and in the famous judgment before Emerix, decisions 1130, number 26; the Sacred Congregation of the Council, in Fabrianen, Remission, December 20, 1806, §. In the contract. Indeed, an injury occurs in this contract if the fruits of the emphyteutical property are not sufficient to pay half of the stipulated canon, as the Rota teaches in decision 468, number 11, part 14, Recent, and in Nullius, or Camerinen, Contract, November 29, 1756, S. 9, before Bussio, and also the Sacred Congregation of the Council, extensively.

[*Latin ed. p. 504*]

504 SIRACUSANA in Praenestina, concerning the Reductionis canonis of January 28, 1865, §. Wherefore, (1) Indeed, there are those who believe that an injustice occurs in ecclesiastical emphyteusis, unless the Church, when entering into the emphyteusis, leaves to the emphyteut the sixth part of the fruits, which is exempt from the canon, as decreed by the Emperor in the authentic document concerning non-alienation or exchange, §. Furthermore, Barbosa in the authentic document states this. Moreover, see C. de SS. Eccles, no. 6; Parian. de locat. et conduci, chapter 45, no. 35; Rota decis. 861, no. 4, before Cerro; and the Sacred Congregation decreed in C. in Privernen. Emphyteusis, June 16, 1787. This principle of justice and equity, the Holy Congregation has responded, applies either to the rescission of contracts or to the diminution of canons, as the circumstances of each case seem to require, as is evident from Fabrianen. Rescissionis contractus, December 20, 1806, and from Senogallien. Transactionis, May 8, 1819. These are matters established in law. However, in the case at hand, not only is the sixth part of the fruits not left to the emphyteut after the canon is paid, but it also does not appear that the income is sufficient to pay even half of the canon. Indeed, the canon, which Perrotta promised during the auction, amounts to the sum of 3846 livres; and the true value of the income, at the time the contract was initiated, as Perrotta himself asserts, was only the sum of 2116 livres, which, therefore, could scarcely suffice to pay even half of the canon. This becomes even more apparent if one considers the diminution of income resulting from the increase in public taxes, as Perrotta himself indicates. And these circumstances, it seems, did not occur only at the

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beginning of the contract. Indeed, Perrotta affirms that the annual income from the properties never exceeded the sum of 2303 livres from the year 1865 to the year 1880; as a result of which, he himself suffered a loss of 2148 livres each year; and, since this loss was repeated for 15 years, (1) Volume I, page 81.

[*Latin ed. p. 505*]

From the year 1780 to 1880, it is stated that the property has lost a considerable sum, amounting to 32,228 livres. This is also confirmed by the testimony of an expert, who asserts that the annual revenue from the property only reaches the sum of 1892 livres. Furthermore, it is clear to everyone that this small sum is insufficient to fulfill half of the canon's payment. Therefore, the canon should be reduced, especially since it appears that the canon is being assessed not only for the direct ownership, but also with regard to the fruits, and for compensation for those fruits, as Reiffenstuel states in book 3, title 18, concerning leases and contracts, § 6, on obligations, and in the Institutes of Emphyteusis, Zanchius, part 2, chapter 8, number 140. It should also be noted, as Perrötta himself states, that this property has been restored to the Chapter through the efforts and financial means of the knight Perrötta, in a dispute with the State. THE CANON DOES NOT SEEM TO BE REDUCIBLE. However, the Archbishop and the Canons maintained that this matter should be judged differently by this Holy Congregation. For their contracts remain in full force; for in order to invalidate a contract concluded with all its terms, not every injury, but one that exceeds half the total amount, is required, as stated in L. 2 C de rescind. vend, and C. C. in Maceraten. Emphyteusis, September 20, 1788, at 1 dub.; and in Tolentinaten, Reductionis canonis, September 13, 1806, §. Defensor. Indeed, since the matter concerns an emphyteusis already contracted, and not one to be entered into, and since it concerns a burdensome, and not a lucrative, emphyteusis, a slight injury, or one that exceeds half the amount, but an enormous injury, one that greatly exceeds half, seems to be required. Furthermore, it has been demonstrated in this case that there is no such enormous injury: for while Perrötta claims the canon to be 3846 livres, and the expert appointed by the Court determines the annual revenue to be 1892 livres, there is certainly no injury that greatly exceeds half. And it can easily be demonstrated that there is no enormous injury in this case. For in order to determine the extent of the burden of the canon, it is necessary to consider not only the fruits, but also...

[*Latin ed. p. 506*]

506. The lands of SYRACUSANA are produced [as evidence], but also those that could be obtained, for the purpose of demonstrating the improvements they are capable of, as the very nature of the contract implies; as after Paul, of Castrum, in Authority Law. The ruins, as shown by the

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Code of Holy Church, were demonstrated in the decision of the Rota in 1186, number 2, concerning Lancetta Nullius, or Carraria. Concerning the contract of 29 November 1756, number 10, before Bussio, and in the confirmatory document of 6 June 1757, § 9. Indeed, when the Archbishop openly admits that the land is capable of the greatest improvements, it must certainly be said that the canon promised by Perrotta is not burdensome, since it can almost be fully paid even without improvements, or if it is burdensome now, it will become very light in the future, due to those improvements for which the emphyteusis was precisely established. Moreover, the Archbishop himself indicates that the canon is very light, when he asserts that only one part of the aforementioned lands, already improved, would be sufficient for the full payment of the canon. Nor does this assertion seem to be contradicted by the report made by the Expert concerning the annual income of the land: since the Expert himself stated in his report that he had constantly kept in mind the land as it was at the time when the assessment was made, setting aside the improvements made by the emphyteuta. Indeed, if he had also taken into account the improvements, perhaps he would have reached the same conclusion as the Archbishop. Therefore, it seems clear that the full canon must be paid in this case. And what could possibly be proven to the contrary from the increase in taxes? Since it is established by law that an increase in public taxes does not provide a just reason for reducing the canon; Rota in Romana, concerning Reduction, of 6 July 1804, § 6; and the Supreme Court in Firmana, concerning Emphyteusis, regarding the reduction of the canon, of 17 May 1819, §. Furthermore, it should be remembered that the Supreme Court has consistently held that the reduction of canons should always be denied, even if the emphyteuta complains of the barrenness of the land, or the increase in public taxes, so that they are left with very little from the emphyteuted lands.

[*Latin ed. p. 507*]

SYRACUSANA, 50, 7, concerning the collection of dues, so that scarcely two out of three parts of the dues are collected. Examples exist in Tolentinate. Reduction. Canon, September 13, 1807, in Fermo, cited. May 17, 1817, in Senogallien. Transference. May 8, 1819, in Senogallien. Reduction. Canon, August 27, 1831, in Fermo. Emphyteusis concerning Reduction. Canon, November 26, 1536, in Praenestina. Reduction of the Canon, January 28, 1865. He considered only the reduction of the canon to be demonstrable at that time, when the parties, judging that the dispute concerning the benefits proposed by the emphyteuta could be settled by a transaction, agreed to it, as can be seen in Tolentinate. Reduction concerning transference, September 12, 1807, and in Senogallien. Transference, March 8, 1819. The promise made by Perrotta, as he himself stated, cannot help him, as it was made between himself and the representatives of the rector. For this promise rests solely on the

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testimony of Perrotta, to whom, therefore, no safe credence can be given, first, because he is a single witness, L. 8 of the Code on Witnesses, and Chapters 10 and 28 of the same title; second, because he testifies in his own favor, L. 9 of the Code on Witnesses, and Canon 1 and 1 of chapter 4, question 4. The Archbishop stated that no one knew that the Praepositus had solicited Perrotta to participate in a public auction, promising a reduction of the canon. Furthermore, it is well known in law that a certain obligation cannot be imposed when it is not certain, L. Quidquid ff. on the words of obligation, and this even more so in this matter, because, as the same Archbishop suggests, this promise seems to be a fabrication. With the foregoing points noted, the purpose was to resolve the doubt as to whether and in what amount a reduction of the canon is permissible in this case. RESOLUTION. The Sacred Congregation of the Council, after deliberation, on December 20, 1884, decided to respond: - Negatively in all cases.

[*Latin ed. p. 508*]

508 FROM SYRACUSE: I. It is gathered that, in ancient times, the object of an emphyteutical contract was uncultivated land, which was granted to someone with the obligation of paying a certain tribute in recognition of the ownership. II. However, over time, even fertile lands have come to be subject to emphyteusis, and the agreed sum ceased to be a small amount, but rather became proportionate to the produce of the property; and therefore, the nature of this contract has been somewhat modified, so that it almost acquired the character of a lease or tenancy. III. In emphyteutical contracts, a reduction of the agreed sum is not granted, unless it is proven that there is a flaw of injury, which exceeds half, as happens in other contracts made in good faith. IV. Indeed, in emphyteusis, both the actual produce and the produce that could be obtained, for the sake of better cultivation, must be taken into consideration. V. The matter concerns a burdensome emphyteutical contract: thus, unless it is demonstrated that the agreed sum exceeds double the produce of the emphyteutical land, a reduction cannot be granted; especially if the produce that could be obtained through better cultivation is considered, as is proper to the nature of this contract, which is intended for the cultivation of land.

5. FLORENTINE DISPENSATION FROM IRREGULARITY. December 20, 1884. By summary request. SUMMARY OF THE CASE. Torquatus, a cleric of the Florentine Diocese, presented himself to the Most Holy Prince, stating that since 1876 he had been dedicating himself to his studies at the Eugenian College in Florence, with the intention of being admitted to the clerical order and being promoted to the sacred orders, which he greatly desired. However, he is somewhat short in stature; and some consider him to be irregular because of this; and concerning this irregularity, to the extent

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that it exists, he seeks a dispensation.

[*Latin ed. p. 509*]

FLORENTINA requested a dispensation militarily. The Archbishop reported that he had consulted the Master of Ceremonies regarding the candidate, Torquatus. The Master of Ceremonies, acting in accordance with the Archbishop's judgment, considered the candidate's stature to be such that it would hinder his advancement to the sacred orders: for, standing before the altar, he was able, by the grace of his appearance, to perform the actions of the Holy Sacrifice of the Mass sufficiently well. "I inquired," said the Archbishop of Florentina, "of the Council regarding the advancement to the sacred orders; for it is known that the Council gives its opinion on matters of such gravity and deserving of such consideration; and I received the response that the small stature and the lack of refinement of the candidate would prevent him from receiving the orders. However," the Ordinary continued, "I am still hesitant, whether to reject the candidate from the orders or to admit him, since his parents earnestly request it, and the candidate, although lacking in refinement, is diligent in his studies and possesses a good character."

A Scholastic Disputation. Although men of small stature are not declared irregular by any legal text, nevertheless, according to a general rule derived from law, that bodily defect introduces irregularity, which hinders the proper exercise of the order, or which presents a notable deformity, causing horror or provoking laughter. Thus, the Canonists unanimously teach, with which the Sacred Congregation of Rites concurs in many instances, but especially in Mexicana, on June 12, 1721. Furthermore, in this case, it seems clear that there is a bodily defect such that it presents a notable deformity and hinders the proper exercise of the order. For, according to the testimony of the Master of Ceremonies, the candidate is so small in stature that the space between him and the edge of the sacerdotal pallium, which he wore for the purpose of the examination, scarcely exceeds the measurement commonly called a decimeter. Therefore, how can he properly handle the divine mysteries without irreverence, or at the very least, without causing scandal to the people? IT SEEMS THAT THE GRACE SHOULD BE DENIED.

[*Latin ed. p. 510*]

510 FLORENTINA. When this is carefully considered, it seems that the petitioner can be declared ineligible for the granting of grace in almost any circumstance. Regarding defects of the body, in title *De Corpore Vitiato*, number 4, it is stated that, "Considering the danger of irreverence in administering the Sacrament, and the scandal of the people, unless very serious reasons exist, especially for promoting eminent knowledge or holiness, this dispensation is not granted." GRACE SEEMS TO BE DENIED. On the

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other hand, it can be observed that the defect of the body in this case is either not so serious as to induce irregularity, or, if it is noticeable, not so significant as to obstruct the path to the desired dispensation. Firstly, it is the Archbishop who must judge whether this or that defect of the body is so noticeable as to render someone irregular, as is stated in chapter 2 *De Corpore Vitiato*, and also in the decree of the Sacred Congregation issued in Mexicana on June 12, 1721, concerning irregularity. Furthermore, the Master of Ceremonies reported that the small stature of the cleric seemed to him to be such that it should not prevent his advancement to the sacred orders. This opinion is to be held in high regard, since it was given in the exercise of his office and after careful observation. Here, we are dealing with a case of doubtful irregularity. But, given such a doubt, it seems that the petitioner should be favored, according to the most common saying: "Doubts are to be restricted, favors are to be expanded." Even more so, because the Sacred Congregation has shown itself to be benevolent not only in similar cases in which the irregularity was certainly present, but also in more difficult cases. Among the numerous examples that could be cited, only two from more recent times will be mentioned. Thus, in Leodien, in the decree concerning irregularity of June 15, 1878 (1), concerning a person suffering from a hunchback and a defect of small stature, it is stated: "It is left to the judgment and conscience of the Bishop, with the faculty of dispensing and enabling the petitioner for all orders, up to and including the priesthood, if he so declares." In Vicentina, in the decree concerning irregularity of March 16, 1883, (2), the same (1) See Volume X I, page 423. (2) See Volume X V I, page 9.

[*Latin ed. p. 511*]

In FLORENTINA, the grace was granted to the Cleric Bonate, who suffered from a similar physical defect and hunchback. Nor are there lacking reasons which seem to increasingly encourage the granting of this desired grace. The Archbishop reports that the Orator is endowed with good and excellent morals, diligently applies himself to his studies, and burns with a fervent desire to dedicate himself to divine service. All of these things can be considered as so many signs of a heavenly vocation. After these things, it would be futile to object to the slowness of the Orator's intellect. Indeed, if he is endowed with a good will, he can compensate for the lack of intellect through diligent study. Furthermore, the sacred Canons do not prescribe that priests must also be doctors, but rather that they possess that knowledge by which they can instruct the Christian people in the law of the Lord. Therefore, if the Orator cannot descend into the thick of battle against the enemies of the faith, he will at least remain at the baggage train, where he will also receive and offer to the Lord a share of the spoils of the enemies. With these considerations, the question was raised as to how the Orator's prayers should be sent.

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RESOLUTION. Having considered the Sacred Canons, on December 20, 1884, it was decided to respond: "According to the judgment and conscience of the Archbishop, after consultation with the Most Reverend Congregation of Rites."

FROM THE ROMAN or MEDIOLANEN Congregation, a Decree: Concerning the Venerable Servant of God, Glycerius Landriani, of the Congregation of Clerics Regular of the Mother of God, of the Schools of Piar. "Is a Commission for the Introduction of the Cause to be appointed, in this case, and for the purpose of what is being considered?"

ON THE MATTER: Among the first companions of Saint Joseph Calasanctius, who, inflamed with zeal for the eternal glory of God and the salvation of souls, dedicated themselves to the education of boys, shone forth the Venerable Servant of God, Glycerius Landriani, born into a noble family of Mediolan, which was closely connected to Saint Charles Borromeo. He, indeed, burning with a desire for Christian perfection, at the age of twenty-four, renounced his wealth...

[*Latin ed. p. 512*]

312 Having sent a herald to announce the decree and to attract the attention of the world, the Institute of the Piarist Schools embraced him, in which, under the discipline of the illustrious Saint Joseph Calasanctius, he flourished for almost six years, during which he lived, with integrity of life, most humble obedience, constant prayer, contempt for himself, and also with heavenly gifts, with which he had deserved to be endowed by God, so that he acquired a great reputation for holiness. Consequently, two years after his death, which occurred in Rome on February 15, 1618, a process was instituted, with ordinary authority, concerning the fame of his holy life, virtues, and miracles, desired by the citizens of Rome and many princes, and then the acts were presented by Saint Joseph Calasanctius himself to the Congregation of Sacred Rites. However, this cause was interrupted due to subsequent changes within the Congregation of the Piarist Schools, and remained so until our time. Recently, however, in the city of Tusculum, where the Venerable Servant of God had once resided, an additional process was instituted, with ordinary authority, concerning the continuation of the same fame of his holy life, virtues, and miracles. And, upon the earnest requests of several Eminences, Cardinals of the Holy Roman Church, Archbishops of Rome, and other men of both civil and ecclesiastical distinction, the Most Holy Lord Pope Leo XIII graciously granted that the matter of the introduction of the cause of the aforementioned Venerable Servant of God could be considered in the Ordinary Session of the Congregation of Sacred Rites, without the intervention or vote of Consultees, although less than ten years had passed since the presentation of the aforementioned additional process from Tusculum in the acts of the same Sacred Congregation, nor had the writings of the Venerable Servant of

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God themselves yet been thoroughly investigated and examined. Therefore, by me, the undersigned Cardinal, Prefect of the aforementioned Sacred Congregation, and Relator of this cause, at the request of the Reverend Father Andrea Leonetti, Priest of the Congregation of Regular Clerics of the Poor Mothers of God, Piarist Schools, Postulator of the cause itself, the following question was proposed for discussion at the Ordinary Sessions of the Sacred Rites, held at the Vatican: "Whether a Commission for the introduction of the cause should be appointed in this case, and, if so, for what purpose." Furthermore, the Eminences and Archbishops entrusted with the sacred rites, after hearing the Reverend Father Augustine Caprara, Promoter of the Holy Faith, who presented his opinion both verbally and in writing, decided to record: "Affirmatively, that is, a Commission should be appointed, if it pleases the Most Holy [Pope]." On March 28, 1885. All of the above having been faithfully reported to the Most Holy Pope Leo XIII by the undersigned Secretary, His Holiness, approving the decree of the Sacred Congregation, deigned to sign the Commission for the introduction of the cause of the aforementioned Venerable Servant of God, Glycerius Landriani, on April 16 of the same year.

D. CARDINALIS BARTOLINIUS, S. R. C., Prefect.

L. S. LAURENTIUS SALVATI, S. R. C., Secretary.

[*Latin ed. p. 513*]

LETTERS from His Holiness Pope Leo XIII to the Most Eminent Parish Priest, Vicar of the city, concerning the advancement of studies of literature in the Sacred Roman Seminary. LEO, BISHOP, SERVANT OF THE SERVANTS OF GOD, FOR PERPETUAL REMEMBRANCE. You understand perfectly well that We, and not without reason, have often stated that the utmost effort and diligence must be devoted to ensuring that the order of the clergy daily flourishes more and more in the knowledge of doctrines. The necessity of this is made greater by the nature of the times: for, given the great progress of intellects and the inflamed pursuit of learning, the clergy could not possibly perform their duties and offices with the dignity and usefulness that is fitting, if they themselves neglected those intellectual pursuits which others so eagerly seek.

For this reason, We have turned our attention to the discipline of learning, especially among the students of the sacred order; and, having begun with the more important subjects, We have endeavored to restore the study of philosophy and theology to the ancient standard, following the example of the most learned Thomas Aquinas; and the very success of this undertaking, as it has already been demonstrated, confirms the wisdom of this counsel. But since a very great part of knowledge, which is both pleasing to learn and highly useful and beneficial to society, is contained in the humanities, We have now decided to contribute something to their advancement.

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First of all, it is important for our clergy to maintain their dignity: for the praise of literature is most noble; and those who have attained it are considered to have achieved something great; while those who lack it are deprived of a certain essential commendation among men. From this it is understood what a cunning and wicked plan it was of the Emperor Julian, who forbade Christians to engage in liberal studies. For he foresaw that those who were ignorant of literature would easily be despised, and that the name of Christian could not long flourish if it were generally considered to be alien to the arts of humanity.

Furthermore, since we are made in such a way that we rise from things perceived by the senses to those that are above the senses, there is scarcely anything more helpful to the intellect than the art of writing and eloquence. For a natural and elegant style of speaking wonderfully invites people to listen, to read; and thus, the light of words and sentences more easily penetrates the minds and holds them more firmly.

[*Latin ed. p. 514*]

S14. Letters reveal the truth. They possess a certain resemblance to external worship of God: for within them lies a great benefit, namely, that through the splendor of earthly things, the mind and contemplation are led to the Divine. Indeed, these fruits of learning have been praised by Basil and Augustine; and our most wise predecessor, Pope Paul III, ordered Catholic writers to adopt an elegant style, so that heretics might be refuted, who arrogantly claimed that the praise of doctrine was joined only with the prudence of letters. Furthermore, we understand that it is necessary for the clergy to cultivate letters, not only our own, but also Greek and Latin. Indeed, more should be attributed to the letters of the ancient Romans, both because the Latin language accompanies and serves the Catholic religion throughout the West, and also because in this field, either few or not very diligent minds apply themselves, so that that praise seems to have universally agreed that writing in Latin is done with dignity and elegance.

It is also necessary to diligently study Greek authors: for in this way, Greek models excel and surpass in every way, nothing more perfect or polished being conceivable. Moreover, it is among the Orientals that Greek letters live and breathe in the monuments and daily use of the Church; and it is not insignificant that those learned in Greek letters, simply by knowing Greek, have more connection to the Latinity of Roman eloquence. Having considered the usefulness of these things, the Catholic Church, as with all that is honorable, beautiful, and praiseworthy, has always held the study of human letters in high esteem, and has consistently devoted a considerable portion of its efforts to their advancement.

Indeed, the holy Fathers of the Church, as much as their times allowed, were all cultivated in letters; and among them are those who were so skilled in intellect and art that they seem to yield little to the most excellent of the

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ancient Romans and Greeks.

Similarly, this great benefit is owed to the Church, that many ancient books of poets, orators, and historians, both Latin and Greek, were rescued from destruction. And, as no one is ignorant, in times when good letters were either neglected through ignorance and carelessness, or were stifled throughout Europe amidst the clamor of arms, they were preserved in the common dwellings of monks and priests, a refuge from that great barbarity. It should also be noted that among our predecessors, the Roman Pontiffs, many are numbered who possessed the knowledge of these liberal arts, which are called the arts of the learned. And this name will surely endure.

[*Latin ed. p. 515*]

Letters 515 recall Damasus, Leo, Gregory the Great, Zachary, Sylvester II, Gregory X, Eugene IV, Nicholas V, Leo X, and in so long a succession of Popes, scarcely one is found to whom many letters were not addressed. For through the munificence and generosity of these individuals, schools and colleges were established throughout the land for eager young men devoted to letters; libraries were prepared to cultivate talents; bishops were commanded to open schools in their dioceses; learned men were enriched with benefices, and were spurred to excellence by the greatest of rewards. These things are so true and so illustrious, that even those who often reproach the Holy See, readily acknowledge the merits of the Roman Pontiffs in the pursuit of the best studies. Therefore, having considered the usefulness and the example of our predecessors, we have decided to diligently provide, so that studies of this kind may flourish among the clergy and that the hope of ancient glory may be renewed. Confident in your wisdom and works, beloved son, we begin our plan in our sacred Seminary in Rome: namely, we wish that certain schools be opened there for young men of sharper intellect and greater diligence, who, having completed, as is customary, the Italian, Latin, and Greek curriculum, may, under suitable teachers, achieve something more perfect in that threefold field. That this may succeed according to our wishes, we command you to select suitable men, whose counsel and works, with our authority, will be applied to what is proposed. We impart to you, beloved son, our Apostolic Blessing, a witness to the divine gifts and our benevolence, in the Lord. Given in Rome, at St. Peter's, on the 20th of May, in the year 1885, in the eighth year of Our Pontificate. LEO PP. XIII.

[*Latin ed. p. 516*]

S16 EX 5, CONGREGATIONE CONCILII MOHILOVIEN. DE NULLITATE MATRIMONII. Die 24 Ianuarii 1885. Sess. 24 cap. 9 - de Ref. Matrim. Opera et coactione matris, magis quam intimo cordis affectu, puella Anna die 15 februarii 1870 in ecclesia Mscislaviensi nuptialem fidem spondebat Tolpyho; at quo infelici omine, cito exitus docuit. Siquidem

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post dissensiones ac iurgia et quamvis inter haec infantulus eis natus esset, brevi tamen mulier virum suum fugit, ac domum apud matrem se recepit, simulque apud consistorium Mohiloviense instetit, ut nullum, ex capite vis et metus suum matrimonium declararetur. Et re quidem vera die 31 Augusti 1876 hoc ecclesiasticum tribunal favore mulieris iudicavit: sed cum causa in gradu appellationis transmissa esset ad consistorium Tiraspolense, istud sententiam primae instantiae revocare censuit; ex eo praesertim motivo, quia «etiamsi actrix reipsa coacta vi et metu fuisset, prout exposuerunt ipsa actrix, eius cognati et testes, tamen in hoc casu matrimonium eorum, ratione diuturnae cohabitationis mutuae, validum et ratum esset, iuxta Cap. 21 Uh. 4 titul. 1 de sponsal. et matr.: Ad id... quamvis ab initio invita fuisset ei tradita et renitens, tamen quia postmodum per annum et dimidium sibi cohabitans consensisse videtur, ad ipsum est cogenda redire etc. » Quo audito, mulier vi passionum abrepta adeo dementavit, ut lutheranam haeresim amplecteretur, et apud lutheranam consistorium Petropolitanum recursum pro matrimonii nullitate haberet. Ibique tandem voti compos effecta, COMPENDIUM FACTI.

[*Latin ed. p. 517*]

MOGILEV. 517, at the beginning of the year 1880: ”The pastor, as they say, married a Lutheran woman. Afterwards, Tolpyho, lamenting his unhappy situation, decided to pursue the cause that had previously been initiated by his wife before the court of Mogilev. Therefore, he chose a lawyer, who, after carrying out the customary legal proceedings, and after summoning the woman, although without effect due to her obstinacy, presented the following argument, the *summa* of which is this: The marriage appears to be invalid. Nothing is more established in law than that free consent is required in marriage; for if this is lacking, the marriage immediately and necessarily collapses, as is especially taught in chapter 25 of *De spons. et matrim.* Furthermore, Alexander III teaches in chapter 14 of the same title, ”that there is no place for consent where fear or coercion intervenes.” Nor is it necessary to resort to open force and great fear to invalidate consent, but machinations and deceit are sufficient, according to the decision of the Sacred Congregation in *Parisien. Matrimonii* of June 25, 1864; or violent prayers and persuasions, as is stated by Consillio De separatorum, book 1, chapter 55, number 21; and by Panimol, decision 62, number 23. Indeed, a greater degree of freedom is required in marriage than in other contracts. Hence, the cited Consillio, chapter 8, number 83, concludes: ”To invalidate a marriage, which signifies the union of Christ with the Church, which is founded on free and voluntary love, and not on coercion, a lesser degree of fear is required than in other contracts, due to the utmost freedom of the will.” Furthermore, the lawyer argued that Anne married Tolpyho through force and fear, and not through free consent of mind, and he sought to prove this with several arguments; and first,

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through the testimony of witnesses, as was done in the court of Mogilev. Four witnesses testified, and therefore, they were, and are, abundantly sufficient to establish full credibility, according to chapter 23 of *De test.*, and chapter...

[*Latin ed. p. 518*]

518 MOHILOVIEN. ib.* cum Rota decis. num. 146 num. 7 part. 3 Hecent, etc. Ex hisce igitur, Generosus testatus est coram iudice delegato consistorii Mohilovensis, se usque ad annum 1870 prope domum Annae habitavisse, cui etiam tamquam scriba aliquando famulatus est: et cognovisse matrem Annae; quae fuit mulier severa et iracunda, et in omnes ingerens metum et timorem. Severe egisse cum filia, quam obiurgabat, minando eam privare benedictione et successione, nisi nuptias iniret cum divite Tolpyho. Quadam vero die audivisse fletum et clamorem in quodam domus cubiculo; a quo vidit evolare matrem insequentem et percutientem filiam Annam. Similia deposuit Medicus. Quibus duobus testibus adminiculantur pariter sub iuramento duo alii, qui ante-matrimoniales testes dicuntur, quia examini matrimoniali ante nuptias iuxta regionis morem peragendo interfuerunt. Post haec, patronus adduxit depositiones aliorum quatuor testium, quibus, quamvis absque iuramento auditis, affirmavit fidem adimi non posse; propinqui enim sunt, et cum praecedentibus cohaerent: ideoque veluti in confirmationem accipiendos esse, et valere. Isti omnes de matris severitate, et de filiae stricta submissione, de minis exhaeredationis, et de vexationibus matris in filiam, ut eam ad matrimonium flecteret, uno ore testati sunt. Quibus ex depositionibus tot violentiae tum physicae tum morales apparent, quarum una tantum, ut advocatus ait, sufficeret ad tollendum liberum consensum, qui in celebratione matrimonii requiritur; cum ad illud irritandum satis est minor metus, quam in ceteris contractibus. Quod praesertim verificatur de puella in caeca erga matrem obedientia educata, ut s. Rota in decis. 326 coram Ludovisio declaravit « quia propter constitutionem corporis illi sexui naturalem, (haec) minus potest resistere metui quam vir. » Et fortius si ei incipiatur timor maternam successionem amittendi, qui a doctoribus gravis dicitur et cadens in con-

[*Latin ed. p. 519*]

MOHILOVIEN. 519: A man standing; Sánchez de matrim, book 4, section 5, number 20 and following; Pignatellus canon, consultation 77, volume 7, number 6. After these, the accuser added indirect proofs, among which he cited the repugnance that the woman showed towards her husband after the marriage. Indeed, it is said that the bride, and even her own mother, only yielded to violence, or under the pressure of strong exhortations; but especially the sworn witness, the doctor Okinczic. Some witnesses affirmed that they had sometimes heard cries and the woman's

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weeping in the marital bedroom, as did Okinczic. Furthermore, it was revealed by Michael Diakoff, the husband, at a time when he was not suspected, that his wife did not wish to live with him. Indeed, scarcely a month after the marriage, he spent the night with a friend, Zapolski, declaring that he would rather stay there than with his wife, as he testified under oath. Moreover, the woman had even cursed, saying, "May the devil take her," as another asserted. Furthermore, all of this sufficiently indicates the violence that Anna suffered when entering into the marriage; as Saint Rota teaches in decision 326, before Louis, number 7, and also in decision 23, number 17, part 12: "Excessive aversion and repugnance demonstrate fear, and that the marriage does not endure." Finally, if anything remained doubtful, how deeply the woman detested the marriage contracted, it could be more clearly demonstrated by the deplorable fact of her abandonment of the faith. This certainly would not have happened, unless the woman hated her husband and the marriage in her innermost being. With these points established, the accuser proceeded to refute the main argument that could be raised in opposition; namely, that after a long period of cohabitation with her husband, the woman, having appeared before ecclesiastical authority, had lost all right to demand a divorce, and that the marriage was valid, even though "from the beginning, there was no valid consent." He affirmed that this was erroneous, whether considered under the Decretal Law or the new law. Indeed, under the Decretal Law, in order for a marriage to be restored through cohabitation, it was necessary that there be both knowledge of the nullity of the marriage and completely spontaneous cohabitation. Thus, Schmalzgrueber, volume 4, part 1, title 1.

[*Latin ed. p. 520*]

520 MOHILOVIEN. §. 421, Sánchez, *De Matrimonio*, Book 4, Chapter 18, number 3 and following. Hins Barbosa, *Vota Decisoria*, Book 2, Volume 17, number 168, denies that, even if there is a spontaneous cohabitation between spouses, marriage can be restored, if it has not been proven that the wife had certain and full knowledge of the nullity. Indeed, in the present case, neither of these things is asserted by the advocate. First, the spontaneous cohabitation, because it is said that the woman fled from the marital home, and only returned under the coercion of her mother. Furthermore, after the Council of Trent, neither a completely spontaneous cohabitation, nor knowledge of the nullity, are sufficient to validate the marriage, but it is required that it be contracted again before a priest and witnesses. This was prescribed by the Fathers of Trent in Chapter 1, Session 24, concerning the reform of marriage. Barbosa gives the reason for this provision in *Vota Becis*, Book 2, vote 16, number 178: "The reason is that all form and solemnity which must be present in the act in order for it to be valid, must also be present in the ratification." Thus, the Sacred Congregation of Councils, in Hispalensis, June 20, 1609, Book 2, page 58,

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verso, responded: "Today, after the Council of Trent, a marriage contracted under fear cannot be validated, even if the fear has been removed by cohabitation with carnal intercourse and other acts, unless it is contracted again, using once more the form of that same Council." Resolutions of a similar tenor are found in the Panormitana case concerning the nullity of marriage, September 20, 1719, § concerning nullity; Gesnerian, *De Matrimonio*, December 17, 1735; Constantinople, December 2 and 16, 1634; Ventimiglia, concerning marriage, March 20 and April 20, 1700; and others. Only one case is excepted, namely, the case of a hidden impediment: but if the impediment, and it is relevant to the present matter, if there is fear of something notorious or brought before a court, or if there is a danger that may at some time become known, then the marriage cannot be validated by the spontaneous cohabitation of the spouses; but it must be contracted again before a priest and witnesses. But now, regarding the claim that the girl was subjected to a hidden fear, no one certainly holds that opinion; and therefore, the advocate concludes, the aforementioned marriage is null and void.

[*Latin ed. p. 521*]

MOHILOVIEN. 521, which has been subsequently validated; therefore, the judgment of the Tiraspol Curia must be overturned. OBSERVATIONS OF THE DEFENDER OF THE VALID MARRIAGE. The defender of the marriage, on the other hand, observed that a marriage, duly celebrated according to the Tridentine form, possesses a presumption of validity in its favor, according to Barbosa, volume 1, number 2, and therefore, he who alleges fear must fully prove it. Furthermore, according to Barbosa, Book 1, number 57, and volume 17, number 154, and Sánchez De Matrim., Book 4, section 12, number 21, when it is proven that the person alleged to have been subjected to violence was absent during the celebration of the marriage, and that friends and relatives were present, it is presumed either that no fear intervened, or that it has been dispelled; and contrary proof is not admitted, unless it is most evident and clearer than if the friends had not been present. Moreover, in the case at hand, it is asserted that Anne's mother was absent, and that, on the contrary, relatives and friends were present. Furthermore, in the facts, it is stated that the spouses, after the marriage, lived together and, in fact, had a child. Furthermore, in chapter 21 concerning betrothals and marriages, it is prescribed: "Although a woman, even if she were eleven years old, had been given to a man against her will and resisted; nevertheless, because after a year and a half she seems to have consented by living with him, she must be considered to have returned to her senses; and henceforth, the testimony of any witnesses whom the delayed woman may name shall not be received." Therefore, in the case at hand, the presumption of law weighs heavily against the existence of fear and, consequently, against the nullity of the marriage. The arguments that

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are alleged in the facts to demonstrate this, according to the defender of the marriage, do not appear to have any significant value, as he attempts to prove this point by point. First, he attacks the examination of the witnesses: indeed, according to the Sacred Congregation of the Council, on August 22, 1840, section 2, "Therefore, after the examination of the witnesses, they should be heard under oath, to which both parents and the betrothed are obliged to adhere; but in the case at hand, five witnesses were admitted, who were not bound by an oath to speak the truth."

[*Latin ed. p. 522*]

522. MOHILOVIEN. Furthermore, it was noted that, according to established legal practice, witnesses are questioned using specific and carefully worded inquiries; this precaution is intended to guard against fraud in all cases, but especially in matrimonial matters, where hidden intentions must be revealed. However, in this case, the testimonies of the witnesses were presented as continuous narratives, without any questioning. Secondly, having raised a slight doubt about the validity and value of the testimonies, the defender of the sacred bond argued that, at the very least, a serious fear existed. For, in order to render a marriage invalid, not just any fear suffices; but, according to Barbosa, *Voti Decretales*, 77, number 46, a fear is required that falls upon a constant man. Such a fear, however, does not exist if it does not satisfy these five conditions: 1) that the feared evil be grave; 2) that it be firmly believed to be imminent; 3) that the one who instills the fear be powerful enough to carry out the threat; 4) indeed, that he be accustomed to threatening; 5) and yet, that the one who fears cannot defend himself, either by seeking help from another or by appealing to a higher authority. *Barbosa, ibid.*, cites numerous testimonies and authorities. Moreover, turning to the facts, it was noted that the fear instilled in the bride was either of losing her inheritance, or of incurring the wrath of her mother. Regarding the first point, since it was not the *paterna* inheritance, but the *materna* inheritance that was in question, it could be argued that the threatened evil was not a penalty for damages, but rather the loss of some profit. Furthermore, "marriages must be free from the penalty of damages, not from the penalty of loss of profit," according to I. 70 §. 1 ff. *De condit, et demonstr. cum Panormit. in c. Gemma n. 1 Be spons. et Barbosa Vot. decis. 127 num. 15 - ibi -* "Therefore... the penalty which consists in the loss of profit imposed upon someone to contract marriage with a certain person, does not invalidate it, nor can it be said that the person contracted marriage out of fear of losing profit." Moreover, the issue arises as to what the *materna* property actually consisted of, whether it was a single house; and therefore, it cannot be determined what loss of profit the mother was threatening. The witnesses testified that the mother rebuked and reproached her daughter, threatening to deprive her of her inheritance

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unless she yielded her will.

[*Latin ed. p. 523*]

MOHILOVIEN. 52 3 tatem: but threats are not always carried out; otherwise, it is true that "a father can compel his son by paternal reprimand to a certain marriage" (Sánchez De matr. I. 4 disp. 25 num. 5, and similarly Groffredus in sum. tit. De desp. impuh. n. 12). However, it clearly appears that the mother was not excessively coercive towards her daughter, since, after the marriage, the daughter returned home and abandoned her husband. This does not align with the assertion of a harsher and more stubborn mother, but rather suggests a disposition towards obedience on the part of the daughter. And this concerns the threats: regarding scoldings, the defender of the marriage noted that, of the five who spoke about these matters, only one was sworn. Furthermore, Adam Tolpyho asserted the contrary, stating that he had never seen the mother treat her daughter harshly. Michael Zapolski said nothing about beatings, as he "lived in close relations with the woman's family." Finally, the account of blows or cruelty is discredited by the fact that the father, who lived there and held a prominent position in the military, would certainly not have allowed his daughter to be mistreated in this way, nor would he have forced her against her will into a marriage. After these points, the defender of the marriage spoke briefly, or rather, about the disturbance of mind that Anne is said to have experienced during the wedding ceremony: he calls this a natural occurrence, and one that often happens; however, the witnesses did not testify that Anne did not respond, but rather that she "remained silent, uttering one or two words," or that "after some reluctance, she responded what was necessary." Regarding the disturbance of mind during the marriage, the accuser observed that this is either a slight or an uncertain indication of fear and reluctance towards the marriage, because it can arise from other causes. But furthermore, what is precisely meant by the term "disturbance of mind" and when it occurred, is not clear. Indeed, the mother said, "My daughter, when presenting herself at the church, suffered a disturbance of mind," and Adam Tolpyho saw Anne experiencing a disturbance of mind.

[*Latin ed. p. 524*]

324. MOHILOVIEN. A fit of absence in the bride's home, and therefore, it occurred only after the wedding was completed, within a week. Apollinaris Boreisza reports that Anne experienced a fit of absence before the wedding. Michael Diakoff states that the fit occurred on the day of the wedding, in the evening. Furthermore, Leo Leonoviwicz testified that Anne, during the wedding feast, "wept excessively" and "suffered a fit of absence," to the point that she was carried from the room. However, Michael Zapolski stated that he saw Anne the day before the wedding "displaying unusual joy," and that she "ran with great happiness" to the seated groom, "sat

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upon his knees," and "kissed him."

As a defender of the marriage bond, observing the cohabitation of the woman with her husband, he noted that this must be voluntary: for it cannot be presumed that the mother would force her daughter by force or fear into the marital home; if this were the case, Anne would still be in the house of Tolpyho. Furthermore, the validity of the voluntary cohabitation, which strengthens the marriage, is derived from the famous oracle of St. Pius V, as mentioned by Benedict XIII, Not. f. 87, no. 63, and by DD. Liguori, Theol. Moral, book 6, n. I, III, Sánchez, I. 8, dis. 34, n. 55. Indeed, in the matter of fear instilled, if it existed, it remained hidden. The defender of the marriage, from the very course of the proceedings, deduced and affirmed that, therefore, either the marriage was validly contracted from the beginning, or at least it was subsequently strengthened and validated by the voluntary cohabitation.

Having briefly considered these matters, the assumption was to resolve the doubt: whether the judgment of the Tiraspol court should be confirmed or overturned.

RESOLUTION. After consideration by the Sacred Congregation, on January 24th...

[*Latin ed. p. 525*]

MOHILOVIEN. In the year 1883, it was deemed necessary to respond: "It does not sufficiently appear that the marriage is null."

I. From the facts presented:

I. A marriage celebrated according to the Tridentine form possesses, in itself, a presumption of validity; thus, the one alleging the contrary bears the burden of fully proving it.

II. It is presumed from the testimonies of witnesses that no fear was present, or that it was dispelled, when the person accused of coercion was not present at the celebration of the marriage; but rather, friends and relatives were present; thus, contrary evidence is to be disregarded unless it is clear and conclusive.

III. Not every fear renders a marriage invalid, but rather, it is required that the fear be directed at a constant man; and that the person experiencing the fear possess five conditions commonly assigned by Canonists.

IV. In the case at hand, it was established that the mother was not present at the celebration of the marriage; and that previously, she had threatened her daughter with her indignation and the loss of her inheritance, the extent of which is unknown, in order to force her to not change her will.

V. Marriages ought to be free from the penalty of loss (damnum), not from the penalty of profit (lucrum); thus, a marriage is valid even if it is entered into out of fear of losing a profit.

VI. In the case at hand, the threats came only from the mother; thus, the

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fear arose from the penalty of losing a profit, and not from the penalty of loss concerning the father's inheritance, which the father could validly compel his daughter to enter into a particular marriage through paternal admonishment.

(1) Note that the Emos Judges, with prudent counsel, did not publicly respond, but rather, revalidated the marriage before the parish priest and two witnesses. In the case at hand, the direct question is difficult; and although it seems to be resolved formally, whether the marriage remains invalid as if it were dissolved and the fear, if it existed, was dispelled, it may remain either evident or hidden. This could be because the force and fear, after being overcome, were not definitively extinguished. However, after the aforementioned question, the Sacred Congregation responded that it does not sufficiently appear that the marriage is null, because of the things that were presented. The marriage remained, having been firmly revalidated by a long period of cohabitation. This is difficult to overturn after the Tridentine sanction, which states that marriages are invalid due to any impediment. Thus, if in another instance, clearer evidence of the existence of the impediment were presented, the judgment of the Sacred Tribunal could be reformed, and the marriage could be declared invalid.

[*Latin ed. p. 526*]

526 REGION. OF JURISDICTION. January 24, 1885. SUMMARY OF FACTS. The pastor of the church of Saint Nicholas in the city of Reggio, to whom the care of souls pertains, became vacant on May 4, 1884. The revenue of this benefice, established by the family of Zoboli in the year 1480, amounts to 15,000 florins, but is reduced to 5,000 florins, after deductions. The bull of erection is not present, and therefore it is not possible to ascertain precisely what the law of its foundation was. However, whether the Bishop or other interested parties agree, this benefice is immediately subject to the Holy See, and therefore it is always conferred by the Apostolic Datary, not freely, but following the presentation of heirs and descendants by the three brothers James, Christopher, and Leonello Zoboli, who established the benefice, and who preferred their relatives, even their kinsmen, in the provision of the benefice. When Leonello relinquished his active right, or one of the three votes, to the Bishop, this Bishop, in the present vacancy, considered that the right of presentation had been exclusively transferred to himself; because the last patrons, who held the other two votes, had sold all their rights in said benefice for 20,000 florins to certain Jews (1). And therefore, by sanction of the Holy Canons, they lost the right of presenting a candidate as a penalty, for incurring censures due to the sale of Church property. Thus, the Bishop alone presented Aloysius de Medici, a kinsman of one of the patrons, to said benefice, those patrons seeming to have relinquished their passive right to their own kinsmen, who were descended from them. However, this institution could not be

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peacefully conceded, because immediately, several individuals, claiming either the active or passive right to the benefice, or the priest De Medici (1), were brought before the civil tribunal, which declared such a sale to be invalid, because the property of the parishes had not been alienated, according to civil law of August 15, 1867.

[*Latin ed. p. 527*]

REGIEN. 527, accompanied by those who bring forth arguments against the ignorance of others. Therefore, the documents were sent to the Sacred Congregation, according to the established procedure. The SYNOPTIC DISPUTATION suggests that the PRESENTATION should be upheld. Indeed, those arguments that could be raised against the completed presentation should first be derived from the fact that the presentation has been made, unless some claim an active right of patronage to the benefice. But this argument cannot be strongly pressed, since these individuals do not precisely contradict the presentation made by the Bishop, but rather, they consent to the person of the priest De Medici, as is evident from their letters; and they only appeal to the fact that, being poor, they might be assisted by the revenues of the benefice. Therefore, having abandoned this line of argument, it seems more useful to demonstrate that the priest De Medici is not worthy to be chosen, and that others are preferable to him, who are worthy and possess a stronger right to the benefice. There are indeed certain letters in the file of proceedings in which it is asserted that Aloysius De Medici lacks intelligence, that he barely completed his studies, and that he was scarcely advanced to the holy orders, and that, indeed, he twice presented himself for examination concerning the hearing of confessions of the faithful, and was rejected both times: although the Bishop favored him greatly. Indeed, it is clear that the care of souls is attached to this position. Therefore, the one presented for this office must be capable of fulfilling this duty; otherwise, he is rejected both by ecclesiastical law and by the presumed will of the founder; see Rota decis. 178 apud Tanari, Schmalzgrueber, title De iure patron, and a presentation made in this way is considered as if it had not been made; see Rota decis. 13, n. 13, p. 9, th. 1, Recent, in compend. red., and this, even if he was named passively as well as actively. Furthermore, the priest De Medici is accused of holding several benefices, and, more seriously, of not fulfilling the obligations attached to those benefices, so that it is said that he has omitted to celebrate a certain number of Masses. These accusations...

[*Latin ed. p. 528*]

The Bishop stated: It is true that in the year 1866, two benefices were conferred upon the same priest, who had a passive right to them; it is also true that these benefices are burdened with certain obligations which have not been fulfilled. Furthermore, although the priest De Medici and his father,

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who is the administrator of one of these benefices, excuse themselves for not having fulfilled the obligations, citing the seizure of their property and a lawsuit undertaken to recover it, it nevertheless seems certain that the priest De Medici, who already holds two or three benefices, cannot legitimately obtain another benefice in the position of Praepositur. It suffices to refer to what the Council of Trent decreed in Session 24, Chapter 17, concerning reform, and to what the Doctors teach concerning the prohibition of plural benefices. We shall also refer to the decree of the Sacred Congregation, related in Bitecten, found in the *Thesaurus Resolutionum*, Volume 2, page 107, concerning the following doubts: I. Can one who holds a first benefice, whether of free collation or by the right of lay patronage, which is sufficient for his support, retain a second benefice by the right of lay patronage, without an Apostolic dispensation? II. Can one who holds two benefices, whether of free collation or by the right of lay patronage, which are by no means sufficient for a proper livelihood, retain a third and fourth benefice by the right of lay patronage, without an Apostolic dispensation? The Sacred Congregation answered: To the first question, negatively; to the second question, negatively. However, what seems to contradict the situation of the priest De Medici is the appeal of three priests, one of whom is Aloysius Zoboli, the parish priest of Saliceta; the second is Sylvester Zoboli, the brother of the former and the parish priest of Cognento; and the third is Angelus Zoboli, the parish priest of Roncocesi. These three priests claim to have the right to be considered for the Praepositur of St. Nicholas. Therefore, when the first learned of the vacancy of the Praepositur of St. Nicholas, the two former quickly presented a genealogical table, in which they demonstrate, through 13 generations, their...

[*Latin ed. p. 529*]

In Regien, number 529, it is stated that there is a direct, agnatic connection with James Zoboli, one of the founders of the benefice, and that they prayed that sufficient time would be granted to them to prove their claim. However, it should be noted that nothing further was reported by them in the records. Angelus Zoboli, for his part, also presented a genealogical tree, by which he demonstrated that he was connected to James Zoboli through agnation, spanning 11 generations; but he was able to obtain baptismal certificates for each of these generations. Furthermore, the validity of baptisms is sufficient to prove descent, according to St. Rotam, decree 178, number 5, as cited by Tartari. Therefore, it should be considered certain that Angelus Zoboli is connected to the founders through a direct, agnatic line, spanning 11 generations. Conversely, among the De Medici and the founders, as evidenced by the genealogical chart presented by the De Medici himself, and approved by the Curia, 12 individuals are found, thus representing 13 generations; furthermore, he is connected twice through women to the founders; and therefore, he would be considered to be further removed

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from the founders than Angelus Zoboli, both in name and in blood. Moreover, as taught by Schmalzgrueber, *De iure patronatus*, page 4, title 38, number 184, and Palma, treatise 13, D. 4, page 9, number 7, if two individuals are equally close, the one descended through the male line should be preferred over the one descended through the female line, because the one descended through the male line is always presumed to be more highly regarded by the founder. It should also be noted that when a relative is being presented, the patron is obligated to present the closer relative, and cannot nominate a more distant one, unless there is reason to believe that the more distant one is more suitable for presentation. However, in this case, it would appear that the more distant individual, and indeed the one descended through the female line, would be considered less suitable, according to the aforementioned statements: for three others are already parish priests. Therefore, the nomination of the priest De Medici does not seem justifiable. Moreover, since the patron in this case is a Bishop, or an ecclesiastical person who is more strictly obligated to present a more worthy individual, whether the presentation is made in a formal gathering or otherwise, as taught by Ferraris, *v. Ius patronatus*, article 4, number 81, Acts, Volume XVII, page 34.

[*Latin ed. p. 530*]

530 REGIAE. But what seems to entirely contradict the claim of the De Medici family is certain wording found in the attached decree of the Bishop, which, from its very foundation, indicates that the right of presentation pertains to the descendants in the direct line of kinship. Furthermore, if the prebend of St. Nicholas is to be conferred upon agnates, and if the De Medici, both from the testimony of the name itself, and from the genealogical chart presented and accepted, are not agnates, then they would already appear to be excluded by the very law of the foundation. However, Angelus Zoboli, or even two other Zoboli priests, if they can more clearly prove their kinship, should rather be considered passively called to the prebend; and in this case, the presentation by the patron would properly not be required, according to St. Rota's decision before Tanari, no. 267, par. 1, vol. 2, and they would already be considered named and presented by St. Rota's decision, no. 132, par. 2, p. 14, Recent; decision no. 299, par. 3, p. 15; decision no. 68, par. 16, p. 12, ibid. THE PRESENTATION APPEARS TO REQUIRE CONFIRMATION. However, the defender of the priest Aloysius de Medici recalls that the erection of the parish church of St. Nicholas into a collegiate church was granted by Sixtus IV and Alexander VI in the years 1481, 1482, and 1495, to James, Christopher, and Leonello De Zoboli, and to their heirs and successors, the right of patronage and of presenting suitable persons to the prebend; and that Leonello was, in turn, presented by the Bishop of Regiae at that time, due to a donation made to him in the year 1564 by the same Leonello, and to his only male

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son, John Zoboli, with the prior permission of the Holy See; that the right of James pertains to the family of the De Medici, through the mediation of Countess Victoria Grimaldi, who was married to the notary Anthony De Medici of Regiae; and that the right of Christopher belongs to George, Ferdinand, and others of the Cassoli-Lorenzotti family, who hold this right from Countess Eleonora Cesis, daughter of Count Ferdinand Cesis, born to Countess Cornelia Zoboli. However, from the right of Christopher, the Counts George and Ferdinand Cassoli-Lorenzotti departed, because they attempted to overturn the collegiate and the prebend; claiming the assets of the foundation as their own, as lay patrons, and afterwards also.

[*Latin ed. p. 531*]

REGIEN. 53. Those who sell the rights of patronage, having received a price, vehemently prohibit, contrary to the Twenty-fourth Session, Chapter 29, of the Council of Trent, that the patrons presume to transfer their right – by sale or by any other title – to others, contrary to canonical sanctions: if they do otherwise, they shall be subject to the penalties of excommunication and interdict, and shall be deprived of said right by the very law. Moreover, this claim to property and subsequent sale is rendered void, because it was made by Hebrews, who are entirely incapable, by law, of possessing sacred property; to whom, moreover, it is forbidden to fully possess the right of patronage, even if they should endow and donate, in order to acquire that right; Fargna, on the law of patronage, Volume I, Part 1, Canon 4, Section 13, number 1. Therefore, the voice of those descended from Christopher, when other co-patrons exist in the patronage, is granted to the Bishop, in conjunction with the other co-patrons; Lambert, on the law of patronage, Book 3, Question 8, Article 10, number 1; Cardinal De Luca, on the law of patronage, Discourse 56, number 18; Vivian, on the law of patronage, Part 1, Book 4, Chapter 5, number 12. And this is different from the case of hereditary patronage, which involves only one patron, in which those who buy and sell the right of patronage are deprived of it by the very law, and the Church is freed from the sin of simony. Therefore, in the vacancy of the Preceptory in the year 1884, the advocate stated that the Bishop of Regiae held the voice of all the patrons: Leonelli, whose was the donatory, and Christopher, belonging to the brothers Cassoli-Lorenzotti; and that these lost it through the claim to property and the sale: while in the line of James, the Reverend Aloysius De Medici presented himself. Therefore, the Bishop, as the sole patron, presented this priest, De Medici, to the Apostolic Datary, stating that he was a priest of impeccable morals and most devoted to the Holy See. Although, the Bishop observed, he was of greater age, being 33 years old, and perhaps lacking deeper learning, the Preceptory had only habitual care, as of Saint Nicholas; so that it could be said to be sufficient for that burden, as long as no other person is recognized

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as suitable for succeeding to the Preceptory.

[*Latin ed. p. 532*]

532 REGIEN. Therefore, the defender concluded, either the Bishop ought to be considered to have two votes in the presentation, as was believed during the presentation itself, or, from the two voices of Leonelli and Christopher of Zobol, one truly pertains to the Bishop, and the other to Charles Cassoli, (1) and consequently, it will always be the case that the Reverend Aloysius De Medici, descended from James, should present himself to the ecclesiastical superior, and that all those who are patrons should participate in the presentation, and therefore, he is rightfully to be appointed to the Regiae priory. But, the orator said, in no presentation whatsoever did Aloysius De Medici have a duty: for in the Bull of Alexander VI, these words are found: And that, in the future, when the aforementioned priory is again vacant, a cleric, if he is found to be of the family of the aforementioned James, Christopher, and Leonelli... should be presented, and in such a presentation, he should be preferred above all others, by the authority of the Holy See, by the tenor of the present document, we establish and decree. Since, therefore, he has both active and passive patronage, and since a cleric existing in the lineage of James, Christopher, and Leonelli has been called; this is certainly the Reverend Aloysius De Medici, descended from the line of James, and therefore, he ought not to be presented, for he was called by the founder himself; Piton, in *De controversiis patronatus*, alleges (17, no. 12 and 68, no. 10); nevertheless, he presented himself to the Episcopal Curia as passively called, and soon afterwards petitioned the Apostolic Datary for his appointment. Indeed, since the Bishop himself testified that Aloysius De Medici is fit to govern the priory, and that no other descendant of the family is present who is suitable for this office, the defender said, those others ought not to be heard, who have not presented any proof of their own right. With these considerations in mind, the matter to be resolved was (1) Charles Cassoli-Lorenzotti, descended from the founder Christopher, who, after the death of the former prior, participated with others in the sale of parish property, and rendered his services to the Church in defending its rights before civil tribunals, against the Jews who were purchasing parish property.

[*Latin ed. p. 533*]

533. REGIE. Question: Whether and to whom the right of institution belongs in this case. RESOLUTION. The Sacred Congregation of Rites, after deliberation on January 24, 1885, judged that the answer is: Affirmative, with the favorable opinion of the Reverend Father De Medici. FROM WHICH THE FOLLOWING ARE GATHERED: I. From Pitonio concerning the co-patrons, it is alleged that a valid nomination can be made by only

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a few; while other patrons, either by law are prevented, or have neglected to nominate: because patrons in the matter of presentation are considered as associates in a common affair. II. Those who enjoy the passive right are considered to be nominated by the founder himself; so that if they are neglected by the nominating patron, they can, by their own right, oppose any nomination. III. A nomination made by the Bishop in the diocese includes both the passive and active right; because he descends from one of the three founders, and is the only one who has fully demonstrated himself to be worthy of the office. IV. Patrons who sell the right of patronage are subject to the penalties of excommunication and interdict, and are deprived of the very right of patronage; so that if a patron dies intestate, his heir is deprived of his right, and the church becomes free for appointment. ORTONA. ERECTION OF THE PRIMICERATUS. On December 20, 1884. By summary of prayers. The canonical offices of the cathedral of Ortona are the Mass, and therefore of equal annual revenue. But "whether all and each have the right to provide for them, and that one is more important than another, is the custom; so that, if one of them is vacant, except only for the offices of Archdeacon, Penitentiary, Theologian, and Parish Priest, which are provided by..." COMPENDIUM OF THE MATTER.

[*Latin ed. p. 534*]

534 ÖRTONEN. Regarding inseparable canonries, the canon who is first in time with respect to possession, shall have the right to choose the vacant benefice. However, it has happened that Canon Francis Bonanni for a long time, namely since the year 1862, possessed the benefice called *s. Sophiae*, which, being situated on a farm, consisted of woods and initially yielded only about one hundred *libellae*. But through his own industry and resources, he made this farm so productive that the Bishop reports that this benefice, in addition to the revenues of the canonry itself, now yields 864.67 *libellae*. Furthermore, this canon, as a reward for his expenses and labor, requested that his canonry, to which the benefice of *s. Sophiae* is attached, be elevated to the rank of a prebendal canon with the same privileges that he formerly enjoyed; and thus be established as a second member of the Chapter, after the dignity of Archdeacon. He also requested that the aforementioned canonry be subjected to the approval and examination of the superior authority at the appropriate time; and that the burden of two Masses per year be imposed upon this dignity, as it is constituted. The Bishop highly commended these requests; but the Chapter, with various conditions, gave its assent, which the Ordinary entirely rejected. Synopsis of the Discussion. It cannot be considered difficult for a canonry of this kind to be elevated to the rank of a dignity, since, as the Bishop testifies, it possesses the most profitable of all the benefices; since both the Bishop and the Chapter consent; and since it would be a greater honor for the Church, which possesses precious relics of St. Thomas the Apostle, and would be

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beneficial to the service of the choir. Therefore, the point of the question seems to lie only in what pertains to the conditions to be imposed upon the dignity. Indeed, if they are accepted, as the Bishop and Bonanni request, it would seem that the right of the other canons would be harmed, namely, the right to choose vacant benefices. For the right "to choose" the benefice of *s. Sophiae* should be suppressed, as stated in the canon.

[*Latin ed. p. 535*]

REASONS. 535, as noted by the Ordinary himself. This would infringe upon the rule "that a right acquired is not to be taken away." However, it must also be considered that it was only through the expenses and labors of Bonanni himself that the endowment for St. Sophia was made prominent and desired. Furthermore, the founder or establisher of a benefice can, at the time of its foundation, add conditions that are favorable to him, even if they are contrary to common law; C. Significatum 11 De praeben., C. Praeterea 23 De iure patron., Ferraris v. Beneficium §. 1 no. 12, and DD. sparsim. And finally, that this "second dignity of the Chapter requires persons of proven integrity of life and morals, as well as knowledge and expertise in the sacred canons." The Bishop states that this can only be achieved henceforth, with the prior consent, and certainly not through the Chapter's right to choose. With these points noted, the question was raised as to what response should be given regarding "the prayers of Canon Bonanni."

RESOLUTION. The Holy Congregation, having considered the matter on December 20, 1884, decided to respond:

Regarding the granting of graces, having spoken with the Most Reverend Archbishop of TARRACONENSIS, concerning ordination and dispensation from irregularity, on December 20, 1884. The following is a summary of the facts.

Anthony, a native of the Archdiocese of Tarragona, and currently teaching the rudiments of the Latin language at the Episcopal Seminary of Oxomen, and simultaneously engaged in the study of philosophy, presented a petition in writing on February 21, 1883, stating that, having reached the age of twenty years, he ardently desires to be admitted to the clerical state and to be promoted to the orders. However, he is unable to accomplish this due to the opposition of the Archbishop, from whom he was expelled from the seminary, and from whom these things are denied.

[*Latin ed. p. 536*]

536 TARRACONENSIAN and OXOMENSIAN letters of dismissal. However, the petitioner, presenting certain reasons, requested that he be granted the faculty of receiving orders from any Catholic prelate. Upon being questioned regarding these requests, the prelate of Osma testified that the petitioner was endowed with good morals. The Archbishop of

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Tarraco, however, responded that everything related by the petitioner was not true, except for his election from the seminary and the denial of the letters of dismissal. Nevertheless, the prelate continued, the petitioner had stated that he suffered from a disease, which he called catalepsy, and that the physician had declared it incurable, and that this disease could lead the petitioner into madness or, at the very least, into a state of foolishness; that he had subsequently suffered further attacks of catalepsy; that, with the help of certain almanacs, and with the assistance of others whom he had associated with himself as accomplices, he had rebelliously risen up against the director of the seminary and other respectable priests, and even against the prelate himself, insulting them with accusations and mocking them with derisive names. Without delay, it was decreed that the petitioner should present sworn testimonies from three physicians regarding his sound health, especially considering the aforementioned attacks of catalepsy; and in the meantime, he should retract the injuries and insulting words spoken against the Archbishop and humbly ask for forgiveness from the same. The petitioner complied with the orders, simultaneously presenting the testimonies of the physicians and a copy of the retraction. However, the Archbishop considered that the retraction should not be accepted, since it only concerned political matters, about which he stated that he was not concerned, and he confirmed the previous information, adding that the petitioner was not repentant for his past faults and was not ceasing from his wrongdoing. The Archbishop was then asked to transmit the formula of retraction, which the petitioner was to issue; and the Bishop was asked to report whether he was willing to promote the petitioner to orders and to admit him to his clergy. A positive response was received from the former, but the letter from the latter made it clear that the petitioner was not worthy of the graces he sought.

[*Latin ed. p. 537*]

TARRAGONES AND OSMA. 537. A SYNOPTIC DISCUSSION ON GRANTS. From numerous resolutions of the Sacred Congregation, it is clear that the Supreme Pontiff is accustomed to grant permission for someone, even if their own Bishop is opposed, to transfer from one diocese to another, in order to accept orders, whether major or minor. The reasons which are most frequently presented for obtaining this are not entirely irrelevant to the matter. Firstly, when the Bishop of Osma testifies that he is experiencing such a shortage of clergy that he has had to appoint a lecturer and entrust him with the duties of a master, it is evident that there is a need, or at least a clear benefit to the Church. And furthermore, when the same Bishop asserts that the lecturer possesses a happy disposition, and is endowed with good morals, all circumstances seem to concur in cases which are usually conducive to the benevolence of the Holy Father. However, if the lecturer has behaved badly towards the Archbishop and

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others, he nevertheless appears worthy of consideration, both because of his young age, in which people often act carelessly and without reflection; and also because of the particular circumstances of the case as they have been related; and finally, because of his expressed retraction. With these considerations in mind, it is difficult to oppose the granting of permission, when three physicians testify with one voice that the lecturer enjoys good health, and has been free from the aforementioned illness for two years. Finally, there are reasons to grant a dispensation, to the extent that it is considered to consist of an irregularity. GRANTS SHOULD SEEM TO BE DENIED. On the contrary, the Archbishop advises that permission should not be granted, either because of the perverse character of the lecturer, or because of the illness from which he suffers. Firstly, the same Prelate observes that the lecturer has not repented, nor does he repent of the things he has done; indeed, he has not ceased at all from his actions. While he demands to be excused in Rome and to be heard favorably, he insults the Archbishop, the Director of the Seminary, and other outstanding ecclesiastical men, with words, letters, offensive writings, and pamphlets; he even harasses the students of the Seminary, whom he seeks to corrupt and lead astray.

[*Latin ed. p. 538*]

538 TARRACONEN and OXOMEN had been admitted, and those who had returned to their former duties continued to cause concern. The Archbishop asserted that, from the most grievous experience, he had learned that this man was so brazen and impudent, that he showed no respect for anyone, even the most deserving, and often acted out of madness. Therefore, it is the opinion that if this Orator is admitted among the clergy, he will become a disgrace to the ecclesiastical state and a stumbling block in the Church. Furthermore, a significant obstacle is presented by the illness that has afflicted the Orator for several years, which has been declared incurable by a physician. And although three other physicians believe that the force of the illness has been lessened, and that its causes have disappeared, this nonetheless seems inconsistent with the facts. For the Bishop of Oxomensis himself, who does not disdain to admit the Orator to his clergy and to promote him to the orders, in his last letter sent on June 3, 1884, to the Sacred Congregation of the Council, after seven months from the date of the aforementioned testimony, deemed it necessary to note that the Orator suffers from epilepsy. From these words, it is clear that he has either been afflicted by new attacks of the illness, or, at the very least, has not recovered from the previous ones. Therefore, it appears more likely that the Archbishop, relying on the testimony of another physician, reports that the illness with which the Orator suffers is incurable, and that it can lead him to madness or, at the very least, to a state of foolishness. With these considerations, the question was raised as to how the Orator's petitions should be

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addressed. RESOLUTION. The Sacred Congregation, having knowledge of the matter, decided on December 20, 1884, to respond: Negatively. NO CONCURRENCE OR PRIVILEGE OF MONTIS CASSINI. December 20, 1884. Session 24, chapter 18, regarding the request. The Abbot of Monte Cassino, wishing to provide a suitable pastor for the vacant parish of St. Andrew, issued an edict for that purpose, inviting all who were suitable to apply.

[*Latin ed. p. 539*]

No one from the mountain of Gassini wished to compete for the position, except for three: Achilles Vitti, Angelus Manna, and Thomas di Fiore. After the Synodal Examiners had considered all the acts and the requests of these candidates, they judged that the priest Di Fiore was more worthy and therefore should be chosen. The Abbot agreed with this decision, and, since the time for the assignment of the parish had passed and the matter had been referred to the Holy See, he sent all the documents of the examination to the Apostolic Dataria, and at the same time, he recommended the aforementioned Di Fiore to the Most Holy Prince. However, the priest Manna was displeased with this, and, citing very reasonable reasons why he, and not the other competitor, deserved to be preferred, he immediately inquired of the Most Holy Dataria about the report of the Examiners, alleging that they had not adequately weighed the merits of both candidates, and that they had not considered the ancient privilege of the Abbey, namely that the benefices of that place should be granted to the citizens. For he himself belonged to the city of Cassini, while the other two were foreigners. Recalling these facts, three theologians from the Apostolic Dataria, to whom the examination of the documents had been entrusted, expressed a favorable opinion for the priest Manna, and considered that he should be preferred. However, in order that nothing might be decided in this matter without the Abbot's opinion, the Dataria asked him to carefully report on both the method followed by the Examiners in judging the merits of the candidates, and on the alleged privilege. The Abbot immediately complied, as was fitting. Meanwhile, the priest Manna did not neglect anything in order to defend his asserted right of precedence. And furthermore, having arranged for the matter to be legally defined, he sent all the documents to the Sacred Congregation. A Synopsis of the Dispute. Indeed, it appears that the judgment of the synodal examiners was just, as is evident from the very Manna himself, who in his final petition did not object to it any further, and considered it sufficient to insist only on the alleged privilege.

[*Latin ed. p. 540*]

540. It is of no consequence concerning the mountain of Montecassino. And this is to be more strongly maintained after what the Abbot noted concerning the method observed by the Examiners in judging the mer-

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its of each [candidate]; and concerning the suspicions which are raised against the life of the priest Manna. Indeed, in the bundle of documents, there lie two appeals, concerning which, although there is no certain reason, since they are anonymous and mixed with true and false accounts, nevertheless, from them it might perhaps be gathered that the opinion of many does not approve of the conduct of the priest Manna. But even if Manna had deserved the votes of all, including Di Fiore; still, there would be a considerable difference between them, because Di Fiore surpasses the other both in knowledge and in the reputation of a good life; and therefore, if he is younger in age, he might nevertheless be considered superior in intellectual cultivation and in the testimony of a virtuous life. With these things established, the object of the privilege seems to be narrowed by the controversy. Furthermore, it must first be remembered that this privilege dates back to the year 1496, when the Abbey of Montecassino was permanently entrusted to Cardinal John de Medici; and Frederick of Aragon, King of Sicily, obtained supreme temporal dominion over the city of St. Germanus, now Cassino, and its territory. Indeed, the citizens of Cassino certainly supplicated this King, so that they might obtain confirmation of the immunities granted by his predecessor, and other privileges as well. Among other chapters, in which new privileges were requested, the following is found: that the aforementioned Majesty would deign to order that the offices and benefices which are in the jurisdiction of Montecassino be conferred upon the citizens of the same jurisdiction. But the King, while fully satisfying the other requests with the formula: "It pleases the Royal Majesty," responded to the proposed chapter concerning offices and benefices with the words: "It pleases the Royal Majesty, as far as it concerns him; but as far as it pertains to the Most Reverend Lord Cardinal, the commendatory of the Abbey, he will consider the matter, so that he may satisfy the aforementioned requests." From these words, it is first gathered that the King himself...

[*Latin ed. p. 541*]

It is alleged that Frederick acknowledged the requested grant of privileges, but that it did not pertain to him, nor did he actually grant it, except for that part which could concern him, and which seems to be only what pleases Riez. However, it is true that the aforementioned King asserted that he would intercede on behalf of his subjects with the Cardinal commendatory, so that he might satisfy these requests; but no document is found in the records, nor any testimony, from which it could be argued that the King's intercession truly took place, and, what is more, that the Cardinal commendatory gave his consent. On the contrary, it seems to be demonstrated from the letters given by the aforementioned Cardinal on August 3, 1497, that is, almost ten months after the day on which King Frederick issued the aforementioned decree. For in those letters, other privileges are

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granted to the citizens of the Abbey of Montecassino, and not a single word is mentioned concerning those offices and benefits for which the King's intercession should have been necessary. This argument seems to carry considerable weight, if one considers that the aforementioned letters are clearly related to the royal concessions. For the Cardinal commendatory himself expressly states that he was moved to grant the privileges, not only because of the proven loyalty of the citizens and the services rendered for the defense of the Abbey, etc.; but also in order to follow in the footsteps of the King, as much as he could in the Lord: "Therefore, moved by these considerations, and wishing to conform, as much as we can with God, to the intention, mind, and will of the aforementioned sacred royal Majesty, and to follow and imitate his example..." Whether, therefore, the King's intercession took place or not, the result is the same, since in both hypotheses the consent of the Cardinal commendatory was lacking. Indeed, it can be conjectured that although the King's good offices were presented to the Cardinal, he nevertheless did not yield to them, as those words seem to indicate: "as much as we can with God." Even more so, because it is unlikely that the same Cardinal was ignorant of the provisions of the sacred canons, especially those which Innocent III had sanctioned in the year 1212, and which...

[*Latin ed. p. 542*]

542 In the writings of GASSINI, in chapter 4 of "Ad decorem" from the "Institutiones," it is read: "As has been reported to our ears, the Patriarch of Constantinopolitanus," despising the clergy of other nations, "only places Veneti" in the churches of Constantinopolitanus, "not considering that God accepts those who do justice in every nation," nor that the sanctuary of God rightfully belongs to all. Therefore, we command that you warn him, so that he does not delay in appointing learned men and others of suitable character, from whatever origin, in the aforementioned churches, and especially in the larger one. This disposition of law appears to strike at the heart of the matter and to put an end to the controversy. Indeed, there is no room for doubt that, even if the Cardinal had yielded to the wishes of the citizens of Cassinensium and granted a privilege, it would not truly endure. For only the supreme Prince can derogate from common law. Therefore, it is not surprising that this privilege has never been valued by anyone, and that the provision of benefices has continued to follow the common law until the present time. This is evidenced by countless examples, of which some have been presented. Therefore, the current Abbot can justly and rightly assert that the granting of such a privilege is an unheard-of thing. However, the advocate for the opposing party, even after being admonished, presented nothing: therefore, the purpose was to demonstrate the doubt as to whether the law of pre-eminence favors the priest Manna in this case.

RESOLUTION. The Sacred Congregation, having considered the matter,

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on December 20, 1884, decided to respond: - Negatively.

FROM WHICH WE GATHER:

I. Since the sanctuary of God does not rightfully belong to hereditary possession, it is entirely fitting that men of good character, from whatever origin, be appointed in the parish churches, who may lead the flock of the faithful to the pastures of salvation through a righteous path.

[*Latin ed. p. 543*]

SECTION 543 OF THE CASSINI DECREE II. Therefore, by common law, a privilege to establish parishes cannot be granted to certain individuals from a particular city or region, excluding others, unless it is expressly established that such a privilege originates from pontifical authority, which alone has the power to derogate from common law. III. Such a privilege has not been formally proven in this matter, neither as legitimate by its origin, nor as introduced through long-standing custom; because contrary practice has been demonstrated by numerous presented examples. TRIVENTO: CONCERNING THE ERECTION OF A BAPTISMAL FONT. On January 24, 1884, Session 21, Chapter 4, concerning Reforms. SUMMARY OF THE CASE. Agnone, a town in the Diocese of Trivento, with a population of approximately eleven thousand inhabitants, has seven parishes; of which the Archpriestal parish of St. Mark, which is currently vacant, possesses a baptismal font. From this baptismal font, the parish of St. Emidius is situated at a greater distance than other parishes. It requested from the Apostolic See the faculty to erect a baptismal font for the benefit of the faithful. The Ordinary reported that the curate of St. Mark does not oppose this request, that the parish of St. Emidius has four thousand faithful; and that it is three kilometers distant from the church of St. Mark. This church is located on the heights of the town and is therefore full of dangers for newborns, especially during the winter months, when falling snow remains frozen for several months. Furthermore, the parish of St. Emidius has two villages located five kilometers from the parish of St. Mark; whose inhabitants, due to the difficulty of the journey to the nearest church, which is not their own, do not bring their young children to be baptized, and the parish priest of St. Emidius does not know his own children.

[*Latin ed. p. 544*]

344 In Trent, the Disputation concerning the Syiioptic Faculty seems to deny the right. For the Archpriest, as a mother church, according to the Curator, (1) includes among its prerogatives and privileges, which it has peacefully enjoyed for six centuries, the right to possess the baptismal font. Therefore, the right to baptize all those born in the city belongs to it by an ancient and prescriptive custom. Indeed, it is not unknown that this custom possesses such force, according to the judgment of both laws, that

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it is equivalent to a written law. Text. in leg. sine scripto Instit. tit. De iure nat. ei gent. Cint. Peretius in Comment. Instit. ad dict. leg. Voet in Comm. ad Pand. tit. 1 de Legibus lib. 1 num. 30 et lib. 3 tit. 13 de Praescriptionibus in 6. Hence, it is not surprising that the Doctors, with unanimous consent, have taught that this very custom makes the title of the "better of the world" presume a privilege, or a burdensome contract, and derogates from the rights of the Parishes; Cap. super quibusdam 96 §. Furthermore, de Verb. signi f.; De Luca de Benef. disc. 32 num. 2, and 4; Schmalz. De iure eccl. tom. 1 tit: 4 num. 31; Piton. Discept, eccles. 61 num. 25; Rota in Derthusen. Iurisdictionis 28 Ianuarii 1697 coram Pio §. 11, and in Qerund. Feriatis 11 Decembris 1699 coram Lancetta. Therefore, since this ancient and centennial custom is not called into question by the Bishop and the Parishes, it seems spontaneously to provide the very best title for the exclusive right of the Archpriestal Church to establish and defend. Nor does it matter that the Bishop may deny the right of matriculation to other churches. For the primary right to the baptismal font is shown to be legitimately prescribed by the centennial custom, in which case, the Holy See has declared that the font cannot be erected elsewhere. S. C. C. tradidit in Fer entina Matricitatis, et Fontis Baptismalis 18 Martii 1797. (1) It is to be understood that the Curator was appointed to protect the rights of the vacant church.

[*Latin ed. p. 545*]

Trivento, 545. However, it is less significant that some parish churches are lacking a baptismal font. Indeed, the Doctors teach that this is not essential to the nature of a parish church; De Luca, *De Parochis*, discourse 37, number 1; Barbosa, *De Iure Eccl.*, book 2, chapter 1, number 23; Gonzalez, *Ad Reg. 8 Cancell.*. In fact, it is known that there are several parishes that lack a baptismal font. This cannot be said to contradict the provisions of the most recent laws, since the Council of Trent itself indicates a distinction between a parish church and a baptismal church in Session 21, chapter 4, concerning reforms; Fagnanus, in chapter 39, concerning tithes; Garz, *De Beneficiis*, part 3, chapter 2, number 167; Cavalier, volume 4, chapter 4, number 21. Furthermore, even in some of the largest cities of Italy, such as Florencia and Bologna, only one cathedral church has a font. The erection of such a font is also to be resisted, because the archpresbyteral church is subject to the right of patronage, and the consent of the patron was not obtained, since thereby the rights of the church would be diminished, and considerable damage would result. Indeed, it is the common opinion of the Doctors that the explicit consent of the patron must be obtained in order that any prejudice may be inflicted upon the same church; Pitonius, *De Controv. Patron.*, contradiction 9, number 40; Gratian, *Discipline Forensis*, 725, number 11; Rocca, *Disp. Iurid.*, chapter 127, number 21. Therefore, if the erection of a font is sought, and it damages the rights of the church, and results to its detriment, it should not be granted without the

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consent of the patron. This is even more to be considered if it is observed that just causes seem to be lacking. Indeed, among the reasonable causes, according to the teaching of the Canonists, utility and necessity are counted. For example, if the distance that separates the inhabitants from the baptismal church is so great, or if the difficulty and harshness of the roads are such that, especially in winter, infants who are transported to the church would be exposed to manifest danger of life. Both of these seem to be lacking in the present case. These considerations are then added to in the Acts of the Holy Congregation, volume 17, session 35.

[*Latin ed. p. 546*]

546 In TRIVENTO, and in matters of doctrine: we have learned that the erection of a new font has been denied in certain similar cases, even though the church in which the font was to be erected was more than one mile distant, and the road was slippery, and in winter, extremely rough due to the great accumulation of snow; as can be seen in Cassano. Rights of Parishes, July 9, 1672, Boiano. Rights of Parishes, May 24, 1732, Ferentino. March 15, 1797. Therefore, since it appears from the above that a reasonable cause is lacking, it necessarily follows that the erection of a font in the parish of Saint Emidius is not to be permitted. THE FACULTY SEEMS TO BE GRANTABLE. However, on the other hand, it has been noted that it is the common opinion of the Councils and Doctors, in accordance with the nature of the canons, that all parochial churches should be provided with a baptismal font. Indeed, although in the early centuries of the Church, only Bishops administered the sacrament of baptism, as stated by Benedict XIV in *Inst. Eccles.*, book 1, number 4, and therefore only cathedral churches, in which Bishops resided, retained such baptisteries, as stated by Marten in *De Antiquiss. Eccles.*, book 1, chapter 1, article 11, nevertheless, as the number of the Christian faithful increased, and as dioceses were divided into parishes, ordinary ministers of baptism, namely parish priests, emerged. Therefore, it seemed very fitting that all parochial churches should have their own baptismal fonts. From that time onward, both the Councils and the Doctors, when discussing this matter, unanimously declared that a baptismal font should be erected in all churches that are truly and properly parochial. Indeed, the Council of Melfi, chapter 7, decreed that each parish should have its own font. Also, the Council of Vence, as reported by Royam in *Instit. canon.*, book 2, title 14, on Parishes, and the Third Council of Milan, convened by Saint Charles Borromeo, made the same decision. These decisions are in accordance with the Canonists, among whom are Paul Fusch, in *De Visit.* and *regim. Eccl.*, book 1, chapter 7; Barbosa, in *De Paroch.*, page 2, chapter 18, number 7; Ursaya, volume 9, page 1, discussion 32 and 33; and Joseph Crispino, in *De visita

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pastorale*, page 5, paragraph 3, number 1.

[*Latin ed. p. 547*]

TRIVENTIFJA §47, rarely, in the article 4, number 96, of *Baptismus*, and in Reclusius, *de Erect.* *paroeh.*, page 1, title 8, number 91. The Sacred Rota tribunal, in its judgments, and especially in the Roman *Iuris baptizandi* of January 12, 1753, number 2, concerning Samniate, states: "Indeed, this kind of ecclesiastical discipline has possessed the highest equity and suitability, because it is most fitting that all parish churches should have their own baptismal font, so that each pastor may administer the sacraments to his people." This doctrine has been put into practice on many occasions by the Sacred Congregation of the Council. Indeed, in Urbiilaten, on June 15, 1604, a rescript was issued with these words: "The Sacred Congregation judged that there ought to be a baptismal font in all parish churches." And subsequently, in numerous resolutions, the erection of a font in parish churches has been readily permitted. Therefore, Pope Leo XII, in his Apostolic letters concerning the new arrangement of parishes in the illustrious city, desiring "to promote the decorum of the parishes," and also to introduce a more convenient, prompt, and readily available administration of the sacred sacrament of baptism, wished that "baptismal fonts should exist in each parish." Therefore, since it is clear from all of this that the ecclesiastical discipline has almost universally established that individual parishes should be adorned with a baptismal font, it naturally follows that pastors and bishops should assent to these wishes. And if, in some cases, this has been denied, it has happened because either it was a question of cathedral churches, which are properly baptismal, or of those truly subject to the mother church, and most closely connected to it. But if anything might still remain doubtful, this is entirely dispelled by the just and reasonable reasons for which the bishop repeatedly renewed his petition. Furthermore, it is the established practice of the Sacred Congregation of the Council that, whenever just causes are present, the erection of a new font should always be readily permitted, among which are counted the multitude of the people, the distance of places, the roughness of roads, the obstacles of water or snow, and other similar circumstances; which, however, are reduced to this one.

[*Latin ed. p. 548*]

548. In TRIVENTO, there exists a grave difficulty, namely, a significant inconvenience for the parishioners in accessing the baptismal church. Indeed, the aforementioned causes are evident from what has been stated above by the Bishop himself. Given these reviewed and legitimate causes, it undoubtedly seems permissible to erect a new font. However, it is wrongly asserted that the archpriestal church possesses superior rights over other parishes. To refute this, the Bishop presented a certain agreement initiated

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between the archpriest and other pastors in the year 1807, aimed at eliminating all disagreements, in which, after stating that seven parishes were independent of each other and possessed equal jurisdiction and care of souls, they agreed that the archpriestal church should be granted matric status, but for the sake of honor, so that it would be first among equals. Once this was accepted, it naturally follows that all parochial churches should enjoy equal rights, and the asserted exclusive right of the archpriestal church to possess a font fades into thin air. If the archpriest has thus far only administered the sacrament of baptism, it is because, as the Bishop states, the city does not have such a large number of citizens as was present in the past. Even if it is admitted that the same church has enjoyed this right from time immemorial, nevertheless, the Sacred Congregation for the Council constantly keeps in mind that principle, which, in the presence of the aforementioned causes and the needs of the people, has always permitted the erection of a new font, and has considered the opposite right of matric status, the exclusive right, and the centuries-old custom to be of no account, as is evident from the Font of Urbisvetana, dated August 3, 1748. Having omitted several other resolutions that could be cited, it makes the same decision in Viterbo, Font of Baptism, May 19, 1877. (1) With these considerations in mind, the following question was proposed: Is there a place for the erection of a baptismal font in this case?

RESOLUTION. The Sacred Congregation, having considered the matter on January 24, 1885, decided to respond: - Affirmative, and furthermore. (1) You have this question in Volume XI, page 232.

[*Latin ed. p. 549*]

TRIDENTINA 549. From these [principles], it is gathered: I. That the spirit of the sacred canons and the established jurisprudence of the Church should entirely strive for the benefit of the Christian faithful, or for the salvation of souls; so that opposing rights and contrary customs should be set aside whenever they present an obstacle to the spiritual good of the faithful. II. Concerning which matter, the Apostolic See has judged on several occasions that no exclusive right of any Church, even if strengthened by an unforgettable custom, of having the baptismal font, should be maintained, whenever the faithful suffer detriment from this right. III. The erection of a new font is to be permitted when just causes are present which can be reduced to one, namely, a serious inconvenience to the parishioners in accessing the baptismal font. IV. Adhering to this jurisprudence, the erection of a new baptismal font in this parish was granted; first, because one font proved insufficient for the number of the people, which had greatly increased; and, moreover, because the archpriestly Church was unable to prove that it possessed this exclusive right, by the title of matriarchy.

ARIANEN. CANONS OF THE HOLY CONFESSORS. January 24, 1885. By summary petitions. The general vicar of this diocese stated: that he is

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accustomed to grant the canons the faculty of leaving the choir, after first obtaining a place in the Chapter of the Cathedral Church, so that they may hear the confessions of the faithful from whom they are required, during the times of the divine offices, whether there is a gathering of the people or not. Wherefore, two questions were posed to the Sacred Congregation: first, whether both he and the canons, who have heard the sacred confessions during the times of the divine offices, can safely retain the full fruits of their benefices; since these consist solely of daily distributions; and second, whether he, and in the future his successors in dignity, can grant the aforementioned faculty to the canons.

COMPENDIUM OF THE MATTER.

[*Latin ed. p. 550*]

550 ARIANO. A Synopsis of the Matter. THE PRACTICE SEEMS TO BE WORTH MAINTAINING. It has been observed that this practice can be maintained by a single chapter. Indeed, as the General Vicar notes in his letter, the people place greater trust in the canons, and it is the unfortunate condition of our times that, unless those who wish to receive the sacraments are promptly attended to by pious individuals, there is good reason to fear that the charity of many will cool. Furthermore, while the time of divine services is said to be beneficial to the faithful, allowing them to approach the sacred tribunal of Penance, it often happens that the canons, due to business matters with which they must deal either before or after the service, are unable to hear confessions at other times. To this, add the disposition of the Capitular statutes, which is as follows: since the care of souls belongs to the Chapter, those who are appointed by the Archdeacon to hear sacramental confessions in the church are exempt from this duty; but first and foremost, the parish priest and the penitentiary are bound to do so, and then others in their aid. This disposition is clearly not to be readily approved, as evidenced by the opinions of the learned doctors, as Cardinal De Luca states in *Annotationes ad Concilium Tridentinum*, Disputation XVI, number 5; Garcia, part 3, chapter 2, number 333; Barbosa, *De officio et potestate Episcopi*, page 3, allegation 73, number 129. Nor is it to be feared that, as a result of this manner of conducting sacred functions, less consideration is given to the dignity of the priesthood, since these functions can be fulfilled both by the remaining canons and by the secular clergy, who are present in sufficient numbers. Finally, it must be noted that, since the city of Ariano has been deprived of many priests and religious who diligently devoted themselves to the sacred ministry, the number of confessors has been so reduced that it seems barely possible to satisfy the needs of the faithful. THE PRACTICE SEEMS TO BE CULPABLE. But on the other hand, there are ecclesiastical prescriptions that stand in the way of the concession, which require canons and others attached to the choir

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to...

[*Latin ed. p. 551*]

ARIANEN. Clerics are obligated to diligently attend their assigned duties, and this "notwithstanding any statutes or customs," as decreed by the Council of Trent, Session 12, chapter 24, concerning reform; those who neglect their duties thereby forfeit their distributions. See *Capitularia Unitae*, concerning clerics who do not reside, chapter 6. And although a cleric may sometimes be present as part of the choir and therefore receive distributions, this occurs only if such a cleric, by virtue of the duties attached to his position, performs the office of confessor, as stated by Schmalzgrueber, and by Pirhing, concerning clerics who do not reside, and by Benedict XIV in *Institutiones Ecclesiasticae*, 107. Or even if, for a necessary and legitimate reason, someone is expressly appointed by the Bishop to perform the duties of a confessor in place of another. This has been approved by the Sacred Congregation in the *Lucana*, March 8, 1635, book 15, Decrees, page 175. However, it seems excessive to allow all canons, without distinction, to be absent from the choir at the discretion of the choirmaster, and it is not necessary; therefore, the Sacred Congregation, in *Tranen*, December 20, 1862; in *Macerateti*, February 14, 1776; in *Neritonen*, June 22, 1624; and in *S. Miniatis*, February 8, 1817, has ruled otherwise, even though customs, or capitular statutes, or even the care of souls belonging to the resident chapter, are alleged. Therefore, if these [customs] were to be followed, and with strict adherence to the law, since two-thirds of the distributions are to be allocated to the fruits of the prebends, and one-third of what remains is to be received for the strictly defined daily distributions; canons who have heard the sacred confessions during the time of the divine offices should return one-third of the distributions received, and the archdeacon should no longer grant permission for them to leave. With the foregoing premises, the question was raised as to how prayers should be dispensed.

RESOLUTION. The Sacred Congregation of the Council, having knowledge of the particulars, on January 24, 1885, decided to respond as follows: - Considering the special circumstances, for the sake of healing and remission concerning the past. As for the future, truly for the sake of grace, to...

[*Latin ed. p. 552*]

552. Arian. For five years, provided that no detriment results from this, having obtained permission from the Most Holy Congregation. From which the following may be gathered: I. Except for the parish priest and the penitentiary, the canons of the chapter are not permitted to hear the sacramental confessions of the faithful during the times of divine office, nor to be present in the choir for daily distributions, without a special apostolic dispensation. (1) In the matter of special exemptions, it has been seen by the Fathers that a contrary custom may be admitted

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for a time, and a temporary remedy granted. Matheran. Concerning the establishment of a foundation at FUNDI. On January 24, 1885. Through summary prayers. A SUMMARY OF THE FACTS. Raphael Sarra, of Matheran, wishing in the year 1845 to provide for his son, Andrea, who was being advanced towards the sacred orders, conceived of establishing a chapel, reserving for himself and his descendants the right of patronage or presentation. In order to acquire the assets of the benefice, he entered into an agreement with his relative, Rosina Morcinelli, in order to obtain two houses, which she administered, and the income of which was to be spent on the celebration of Masses. The same Rosina also donated another house of her own property, with the obligation of celebrating certain Masses. Sarra, in turn, added a vineyard to the aforementioned houses, constituting it as a dowry. Both donors appeared before a notary, and the obligations to be imposed on the new chapel were legally enumerated, the income of which amounted to 51 ducats, which was sufficient for the title of ordination. (1) To the legal sanction is added the jurisprudence of the Sacred Congregation, in numerous resolutions, and especially in one concerning Distributions of April 1, 1876, Vol. X, page 382; and in another concerning the Service of the Choir of July 26, 1879, Vol. XIII, page 167 of these annals.

[*Latin ed. p. 553*]

MATHERAN. 503. Shortly after, at the urging of the same Sarra, this chaplaincy was established by an archiepiscopal decree as "a perpetual ecclesiastical benefice by the right of lay patronage," granted indeed to the founder and his heirs the right to present a rector or chaplain, but with the Ordinary retaining the faculty of instituting and confirming him. The cleric Andrew was then presented to the chaplaincy by his father and obtained it, and he obtained it, and he regarded it as a title for ordination. After several years had passed peacefully in this manner, Sarra now requests that funds be drawn from the assets of this chaplaincy and that a vineyard be granted to him freely, which he had intended to contribute to the endowment of the benefice. For his son, Andrew, is now a priest, and having been co-opted today into the number of participants in the cathedral chapter, he no longer needs this benefice, either as a title of ordination, or as a means of honest support. Furthermore, as the petitioner states, he did not intend to give the assets of the aforementioned property permanently, but only for a time, so that they might contribute to forming a sufficient patrimony for the sacred ordination of his son. Therefore, he did not wish the chaplaincy to be burdened with any obligation of celebrating masses. If this limitation was not expressly stated in the founding documents of the chaplaincy, it may perhaps have occurred through the error of the scrivener, as the Ordinary conjectures, who otherwise is not opposed to the prayers. Disputation. It has been noted that this petition is opposed by canon 51 of the sixth book:

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"Once dedicated to God, it cannot be transferred to human uses." For if, in human affairs, what once pleased can no longer displease, according to rule 21 of the sixth book; a fortiori, in divine matters. Especially since no reason of necessity is alleged, such as the petitioner's need, to which assistance would be given. It cannot be supposed that Sarra at that time had no intention of contributing to the endowment of the chaplaincy, since he wished to retain all rights as the founder.

[*Latin ed. p. 554*]

554. Matheran, furthermore, seems to have wished to offer something temporary, which is equally unacceptable. The goods offered for the endowment of a benefice should be understood as given perpetually to the Church. Moreover, if, either in the acts of the tabellione or in an Episcopal decree, the donor has allowed his property to be considered as an integral part of the benefice; indeed, if he has wished to reserve the right of patronage for himself and his family perpetually, it seems evident that he then possessed the soul of a perpetual benefactor. With these premises, the question arose as to what should be answered in prayer. RESOLUTION. The Holy Office, having taken cognizance of the matter on March 24, 1885, responded: Genoa. Letters in which it is forbidden to grant to clerics foreign insignia of honor. Most Illustrious and Most Reverend Fathers. Although it is most fitting for Ecclesiastical men not to seek human honors, but to expect recompense for their good deeds only from the Lord, nevertheless, the Prelates of the Church are accustomed to adorn those who, above all, have deserved it in the matter of Christian affairs, with titles, dignities, and other insignia of honor; for, by honoring the more excellent, it is shown that virtue and knowledge are to be held in high esteem, and at the same time, they are encouraged to pursue the path of the Lord. But it often happens, as some Bishops have lamented, that while priests, venerable in age and in every kind of virtue, are unknown and held in contempt, younger men and those who have contributed little or nothing to the good of the Church seek dignities, acquire insignia, and receive titles. And when no hope smiles upon them to obtain all this among their own, they turn to external pastors, who sometimes readily accept their requests. It frequently happens that these poor souls, unknown to the Ordinary in their own diocese, and to the astonishment, or even derision, of all, display themselves in foreign vestments, boast of new titles, and thus despise those who are better. Furthermore, the Most Eminent Fathers of Trent, interpreters and defenders of the law, while bitterly deploring the fact that the sentiments of Christ are, day by day, in...

[*Latin ed. p. 555*]

To certain individuals, it is hoped that your Eminence will not leave anything undone, so that all those of the clergy entrusted to you may strive

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for better graces, despise earthly things, love heavenly things, and glory only in the Cross of our Lord Jesus Christ. Lest, moreover, injustice be done to those more deserving, and ecclesiastical honors be debased, you, Most Eminent Fathers, following the most holy mandates, are requested to bestow titles and insignia of honor upon you very rarely and with great caution, but only upon those who are most worthy and who have rendered the best service to the Church; and to no cleric whatsoever should any sign or title of honor ever be conferred without the knowledge and consent of the Ordinary to whose authority he is subject.

This, I signify to you in the name of the Sacred Congregation, and I confess the earnestness of my concern for your Eminence, to whom I pray for all that is fortunate and salutary from the Lord. Your Eminence, in Rome, on the seventh of September, 1884.

As your Brother,

[Signature]

From the Sacred Congregation of the Holy Roman Inquisition.

DOUBTS concerning minor excommunication, concerning those who absolve a complicit, and concerning craniotomy.

It has come to my attention that, in letters of the 25th of last May, your Eminence submitted the following three doubts to the examination of this Congregation:

1. Almost all commentators on the Apostolic Constitution teach that, by virtue of this Constitution, minor excommunication has been abolished. May this opinion be safely taught in a seminary?

2. Again, all commentators on the same Constitution teach that the confessor is not subject to excommunication who pretends to absolve a complicit in a shameful sin; but does not, in fact, absolve him. However, the Holy Penitentiary declared the contrary on March 1st, 1878. May the Rector permit the aforementioned opinion of the commentators to be taught in his seminary, in opposition to the response of the Holy Penitentiary?

3. May the Rector permit the opinion of some recent authors, which holds that it is permissible to kill an infant in the womb of the mother in order to save the mother, if otherwise both the mother and the infant are about to perish, to be taught in his seminary as probable?

[*Latin ed. p. 556*]

S56. DOUBT. Furthermore, the Most Reverend Fathers, together with the General Inquisitors, in a Congregation held on Thursday, the 5th of December, reviewed the first and second of the proposed doubts. Since the third, being the subject of numerous petitions, also transmitted by other Ordinaries, is still under consideration by this Supreme Order, it remains pending. Indeed, the Most Reverend Fathers have responded. To the first: Affirmatively. To the second: Negatively; and this has been communicated

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to the Most Holy Father, regarding both. Now, since the Most Holy Lord has deigned to approve and fully confirm the resolutions and responses of these Most Reverend Fathers, I communicate them to Your Eminence for your guidance; and I wish to express the sentiments of profound devotion felt by them, to whom I pray that all blessings may come from the Lord.

Most Reverend Eminence, in Rome, on the 10th of December, 1883.

Your devoted brother,

ALOIS CARDINAL BILLIO

To the Most Illustrious and Reverend Lord Bishop of Petrocoria.

DOUBT concerning the surgical operation called craniotomy.

The Most Reverend Fathers, together with the General Inquisitors, in a Congregation held on Thursday, the 28th of May, reviewed the doubt proposed by Your Eminence: "Can it be safely taught in Catholic schools that a licit surgical operation, which they call a craniotomy, can be performed, when, if it is omitted, both the mother and the child will perish; but, if it is performed, the mother will be saved, while the child perishes?" And, after long and careful deliberation, taking also into account what has been written on this matter by learned Catholic men, and transmitted by Your Eminence to this Congregation, they judged it necessary to respond: "It cannot be safely taught." This response, which the Most Holy Father fully confirmed in an audience on the same day and in the same week, I communicate to Your Eminence, and I humbly kiss your hands.

Rome, 31st of May, 1884.

To the Most Reverend Archbishop of Lyons,

Your most humble and devoted servant,

R. CARDINAL MONACO.

[*Latin ed. p. 557*]

FROM THE HOLY CONGREGATION FOR THE PROPAGATION OF THE FAITH: Letters from the Prefect to the Most Reverend Archbishop of Westminster, concerning heterodox Universities.

Most Reverend and Most Excellent Sir, Rome, 30th of January, 1885.

I have received the letter of Your Eminence, dated the 20th of last month, from which I have learned, with great sorrow, that many families do not sufficiently heed the admonitions of the Holy See regarding the sending of their sons to the Protestant Universities of Oxford and Cambridge.

Your Eminence mentions that this stems more from an excuse that they make for this practice, believing it to be excusable due to a supposed tolerance on the part of the Holy See, rather than from malice of will.

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Therefore, I implore you, in order to protect the higher education of the Catholic youth in these countries from such a danger of perversion, to make it known to the faithful that nothing has changed regarding the instructions on this matter which were transmitted to the English Episcopate by the Most Reverend Cardinal Barnabò, my predecessor, on the 6th of August, 1867, and which were included in the provincial Synods of Westminster.

For this purpose, I believe it would be appropriate to inform the Bishops of this Province to remind their faithful of the aforementioned instructions.

Meanwhile, I take this opportunity to renew my greetings to Your Most Reverend Eminence.

Rome, the Eve of the Kalends of February.

I have received your letters, Most Eminent Prince, dated the 20th of December of the past year, from which I have learned with great distress that, among many families, little regard is given to the admonitions of the Holy See concerning the sending of their sons to the public schools of Oxford and Cambridge.

You yourself, Most Eminent Prince, indicate that this rather arises from the fact that they believe this practice to be excusable because of a certain, falsely presumed, tolerance on the part of the Holy See, rather than from malice of will.

Therefore, I implore you, so that the higher education of the Catholic youth who reside in these regions may be protected from such a danger of perversion, to make it known to the faithful that nothing has been changed in the documents concerning this matter, which were given by the Most Reverend Cardinal Barnabà, my predecessor, to the Bishops of England after the Ides of August in the year 1867, and which were included in the Acts of the Synods of Westminster.

For this purpose, I consider it appropriate to instruct, through you, the Bishops of this Province, so that they may bring these same documents to the attention of the people subject to them. I take this opportunity to offer my most humble greetings.

[*Latin ed. p. 558*]

558 DECREE, with the deepest reverence, I, "having humbly kissed your hands, have the honor to reaffirm my obedience to Your Eminence. Most Reverend Lord, behold, I, your most humble and devoted servant, G. Card. SIMEONI, Prefect, DOMENICO, Archbishop of Tyre, Secretary, your most humble and obedient servant, Prefect, Card. DOMINICUS SIMEONI, Archbishop of Tyre. Secretary.

FROM THE HOLY CONGREGATION FOR INDULGENCES, a DECREE whereby an indulgence of three hundred days is granted to those who recite the following prayer for the conversion of the people of Scandinavia.

Most Blessed Father Charles Schilling, a Swede, converted from the

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heresy of Luther, and a professed priest of the Barnabite Congregation, prostrates himself before Your Holiness and earnestly implores that, to aid the work of converting Scandinavia, you would deign to enrich the following prayer with some indulgence.

That, through grace, the prayer for the conversion of Scandinavia, Most Blessed Father Charles Schilling and Sweden, converted from the Lutheran heresy to the profession of the Catholic Faith, and a professed priest of the Congregation of Saint Paul the Apostle, now called Barnabas, prostrate at the feet of Your Holiness, earnestly begs and implores that, for the purpose of promoting this most holy work, of bringing the peoples of Scandinavia back to the Catholic Faith, you would deign to enrich this prayer, which is presented here, from the treasures of the Church.

Concerning the prayer for the people of Scandinavia:

O Good Jesus, prostrate at your feet, I humbly implore you for the salvation of the whole world, that you would deign to cast a merciful glance upon the peoples of Scandinavia, who have been separated from you for so many centuries and lie in error.

[*Latin ed. p. 559*]

From page 559, those souls, so many centuries ago led into error and deceit, sitting in the shadow of heresy, separated from your Church, deprived of participation in the venerable Sacrament of your Body and Blood, and of the other Sacraments which you instituted to aid the faithful, both while they live and as they depart from this life; deign to turn the eyes of your mercy towards them. Remember, O Redeemer of the world, that even for those souls you suffered a most bitter death, shedding all your blood. Restore, O good Shepherd, those wandering sheep to your one fold, and to the salutary pastures of your Church, that they may be one flock with you under the guidance of your Vicar on earth, the Roman Pontiff, to whom, in the person of the Apostle St. Peter, you entrusted the care of your sheep and lambs. Hear, O good Jesus, our prayers, which we offer with the most fervent hope in the charity of your Heart; and may your most holy name receive praise, glory, and honor for all ages. Amen.

G. INDULGENCES: In the darkness of heresy, separated from your Church, and deprived of participation in the adorable Sacrament of your Body and your Blood, and of the other Sacraments which you instituted for the aid of souls in life and in death. Remember, O Redeemer of the world, that even for those souls you suffered a bitter death, shedding all your blood. Restore, O good Shepherd, those wandering sheep to your one fold, and to the salutary pastures of your Church, so that they may form one flock with you under your guidance and that of your Vicar on earth, the Supreme Pontiff, to whom, in the person of the Apostle St. Peter, you entrusted the task of tending your lambs and sheep. Hear, O good Jesus, our prayers, which we offer with the most fervent trust in the charity of

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your Heart; and may your most holy name receive praise, glory, and honor in all ages. So be it.

His Most Holy Lord Pope Leo XIII, in an audience held on April 18, 1885, granted, to all Christian faithful of both sexes who, with at least a contrite heart and with devotion, recite the aforementioned prayer, a plenary indulgence of three hundred days, once a day. This indulgence is valid forever, without any brief being required, notwithstanding any contrary provisions. Given in Rome, in the Secretariat of the aforementioned Sacred Congregation, on April 18, 1885.

I. B.

CARD. FRANZELIN, Prefect.

FRANCISCUS DELLA VOLPE, Secretary.

[*Latin ed. p. 560*]

560 FROM THE SACRED CONGREGATION OF RITES: DECREE OF MILAN. Concerning the Beatification and Canonization of the Venerable Maria Zaccaria, Handmaid of God, Anthony, Founder of the Congregation of Regular Clerics of Saint Paul, the Barnabites. On the seventeenth day before November of the year 1883, it was benignly granted by the Most Holy Pope Leo XIII, that in the Ordinary Session of the Sacred Congregation of Rites, without the intervention and vote of the Consultors, the validity of the Apostolic Processes, by authority of the Church, in the ecclesiastical courts of Bologna, Iesi, and Cremona, concerning the four miracles which are said to have been obtained by God through the intercession of the aforementioned Venerable Handmaid of God, Maria Zaccaria, be examined. Therefore, the Most Eminent and Reverend Lord Cardinal Lucido Maria Barocchi, Promoter of this Cause, at the request of the Reverend Father Ignatius Pica, Priest of the Congregation of Regular Clerics of Saint Paul, the Barnabites, in a special session of the aforementioned Sacred Congregation, according to the particular prescriptions issued by the same Most Holy Pope under the date of November 20, 1878, and assembled at the Vatican, proposed the following question for discussion: Whether it is established that, in the Apostolic Processes in the courts of Bologna, Iesi, and Cremona, concerning the miracles of the Venerable Servant of God, the witnesses were rightly and properly examined, and that the testimonies produced were legitimately obtained, in the case and to the effect of what is being considered? Furthermore, the Sacred Congregation, after mature deliberation, and having heard the voice and written opinion of the Reverend Father Augustine Caprara, Promoter of the Faith, judged that the following should be written: Regarding the Processes of Bologna and Iesi, Affirmative, that is, that their validity is established; regarding the Process of Cremona, it is postponed for consideration. On December 9, 1884. The agreements concerning these matters were faithfully reported to the Most Holy Pope Leo XIII by the undersigned Secretary, and His Holiness ap-

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proved and confirmed the judgment of the Sacred Congregation on the eleventh day of the same month and year. And when the aforementioned Sacred Congregation was satisfied regarding the Process of Cremona, the same Holiness also deigned to approve the validity of this Process on April 13, 1885.

D. CARDINALIS BARTOLINIUS, S. R. C., Prefect.

LAURENTIUS SALVATI, S. R. C., Secretary.

[*Latin ed. p. 561*]

FROM THE VATICAN, A LETTER: The Most Reverend Cardinal Jacobini, entrusted with matters concerning external affairs of the Holy See, writes to the Most Excellent Apostolic Nuncio in Madrid, regarding certain pernicious principles published in the periodical "Siglo Futuro."

In the periodical "Siglo Futuro" of March 9th, an article entitled "The Same Question" was published, in which it is asserted that a bishop has the right to entirely disregard the Representative of the Holy See in matters concerning religious interests, it being sufficient for him to consult his own conscience; that in censuring the conduct of a government in matters of a political-religious nature, the right of a bishop prevails over that of the Apostolic Nuncio in both scope and extent; that the actions of the Nuncio are hindered by human considerations, whereas those of a bishop are free from such hindrances; that the office of the Apostolic Nuncio pertains to external and diplomatic relations between the Church and the State, while that of the bishops concerns the internal and substantial relations that God has established between the two powers; and that it is not true, as the author himself states, that the Nuncio represents the essential relations between the Church and the State; therefore, neither Catholics nor bishops should turn their gaze to the Nunciature.

In the periodical "Siglo Futuro" on March 9th, a certain passage was published, entitled "The Same Question," in which it is asserted that bishops are permitted, by the authority of the one who holds the office of the Roman Pontiff, to set aside the Nuncio in matters pertaining to religion, provided that they consult their own conscience; that in matters concerning both civil and religious order, whether through laws or the actions of any government, a bishop has a greater right, both in scope and in extent, than the Apostolic Nuncio to exercise severe censure; that the actions of the Nuncio are hindered by human considerations, whereas those of bishops are free; and that the office of the Apostolic Nuncio is limited to those matters concerning external relations and public law between the Church and the civil government, while the office of the bishops pertains to internal relations, and those pertaining to the very nature of the matter, which God has established between the two powers; it is not true, as the author himself says, that the Nuncio represents the essential relations between the Church

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and the civil government.

[*Latin ed. p. 562*]

562 APOSTOLIC LETTER to guide your conduct; for the highest Pontifical Representation operates within a special order (that of diplomacy), entirely distinct from the order in which Catholics operate, and from that which constitutes the proper sphere of each prelate; therefore, for example, when the Pontifical Representative has declared in an official document that there exist benevolent and cordial relations between the Holy See and the Spanish government, Catholics, and with them all the Bishops, assert that the relations existing between the Church and the Spanish government are utterly detestable, even though something may be true according to the law of nations, which is not true in reality. The passage concludes with a threat, namely, with the ostentation of a firm intention to reiterate this doctrine, hitherto unheard of in Spain, so that it may prevail and become an axiom, in order to prevent Catholics and Bishops from hiding under a vile silence, under a false prudence, under a misguided respect for certain authorities, which are nothing other than the Holy See and those who represent it, fulfilling its functions.

To Your Most Illustrious and Reverend Eminence, it is certainly not unknown to you how pernicious and offensive these principles are, by which they revive the old theories of the Gallicans, and which assert that neither Catholics nor Bishops should pay attention to the authority of the Apostolic Nuncio, or conform their lives to his commands: For he who bears the person, office, and power of the Roman Pontiff operates within a certain special order of things, which pertains to public law, and which is sharply distinguished from the order in which Catholics are contained, as well as from that within which the actions of each prelate are circumscribed: therefore, for example, it has happened that he who, in Spain, discharges the office of the Pontiff, having affirmed in a certain writing, published and made public, that friendly and sincere relations exist between the Holy See and the Kingdom of Spain, Catholics, and all the Bishops, assert that the relations existing between the two principalities are utterly detestable; for indeed, something may be true according to the law of nations, which is not true in reality. The passage concludes with a threat, or rather, the ostentation of a firm intention, to insistently promote this doctrine (hitherto new and unheard of in Spain), so that it may prevail and pass into the category of axioms; so that Catholics and Bishops may not afterward hide under a vile silence, under false prudence, or under an irrational reverence for certain authorities, which are in fact nothing other than the Holy See and those who fulfill its functions.

[*Latin ed. p. 563*]

Oh, inhabitants of Itzebrion, who have already been reproved and con-

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demned by the Holy See, and specifically by the Most Holy Father Pius VI in the celebrated work *Responsio super Nuntiaturis*, and setting aside that fact, it will not be difficult to demonstrate that such principles are false and repugnant to the true concept of Apostolic Nunciatures, not merely to that of the supreme Pontifical Authority. And since these principles encompass two questions, one of fact and the other of law, it will be beneficial to begin with the latter, as it is from which the former depends. In the Vatican Council, not only was the dominion of the primacy of the Roman Pontiff over the universal Church confirmed, but also this authority of the primacy was dogmatically defined as *esse supremam potestatem iurisdictionis in universam Ecclesiam*, not only *in rebus quae ad fidem vel mores*, but also *in iis quae ad disciplinam et regimen Ecclesiae per totum orbem diffusae pertinent... et hanc eius potestatem esse ordinariam et immediatam in omnes ac singulas Ecclesias, sive in omnes et singulos Pastores et fideles...* For this reason, the same Council declared that towards that authority (of the primacy), "whosoever pastors, of whatever rite and dignity, whether individually or together, are bound by the office of hierarchical subordination, and that it is most pernicious and injurious that these statements are brought forth, by which the ancient opinions of the Gallicans and Febronians are revived, which have already been reproved and condemned by the Holy See, especially by the Most Holy Father Pius VI in the celebrated work entitled *Responsio super Nuntiaturis*. And with this condemnation established, it will not be difficult to demonstrate that such statements are entirely false, and repugnant to the very nature of the office which Apostolic Nunciaries fulfill; and to the idea of the supreme Pontifical authority. Since, indeed, these statements touch upon two questions, namely, of law and of fact, it is advisable to begin with the former, from which the latter depends. In the Vatican Council, not only was the dogma of the primacy of the Roman Pontiff over the universal Church confirmed, but also the authority of this primacy was defined as a dogma of faith: namely, *esse supremam* power of jurisdiction *in universam Ecclesiam*, not only *in rebus quae ad fidem vel mores*, but also *in iis quae ad disciplinam et regimen Ecclesiae per totum orbem diffusae pertinent... et hanc eius potestatem esse ordinariam et immediatam in omnes et singulas Ecclesias, sive in omnes et singulos Pastores ac Fideles...* For the same reason, the same Council declared: "Towards that same (authority of the primacy), whosoever pastors, of whatever rite and dignity, whether individually or together..."

[*Latin ed. p. 564*]

564. Those who are bound by the obligations of ordination and true obedience are thereby bound so that, maintaining communion with the Roman Pontiff, as well as the unity of the same profession of faith, the Church of Christ may be one flock under one supreme Shepherd. From

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this doctrine it follows: 1. That the Roman Pontiff, by virtue of his primacy, is the true Shepherd and Bishop of the universal Church; 2. That he, always and in every case, can authoritatively intervene in all matters concerning individual dioceses; 3. That the Bishops, whenever the Roman Pontiff intervenes in the affairs of their diocese, are obligated to obey him and to adhere to his decisions. Therefore, to assert that the Bishops, when dealing with religious matters, should consult only their own conscience, is to deny that hierarchical subordination and that obedience to the Holy See, which the Bishops are necessarily due. The Bishops, when dealing with religious matters, should certainly consult their own conscience, but it is necessary that they follow the precepts of the Roman Pontiff, from which it is never permissible for them to deviate even by a hair's breadth. Furthermore, the Vatican Council, as a corollary of the Primacy, declared that it is the right of the Roman Pontiff freely to communicate with the pastors and flocks of the whole Church, so that they may be taught and guided by him in the way of salvation; and it declared that those who deny this authority of the Supreme Head are to be condemned and rejected.

[*Latin ed. p. 565*]

56. "They say that communication can lawfully be impeded between the supreme head and the flocks." From these words, it is most clearly evident that it is forbidden to everyone to prevent the Holy See from communicating directly and immediately with the faithful subject to it and with the Bishops; and from treating and defining matters pertaining to religion with them. It is also manifest that this right of the Holy See would be rendered void if it were permissible for Bishops, in the administration of their dioceses, to deviate from its precepts or to act otherwise than as prescribed by them. Those who can be taught and guided on the path to salvation must, therefore, be rebuked and condemned by those who say that communication can lawfully be impeded between the supreme head, the pastors, and the flocks. From these words it appears that it is forbidden to all, without distinction, to prevent the Holy See from communicating with itself and immediately with the faithful, and from treating or defining their religious interests. And it is also manifest that this right of the Holy See would be rendered futile if the Bishops, in the governance of their dioceses, were not to strictly adhere to the prescriptions of the same, and were able to act differently from what is established by them. If the Roman Pontiff, by reason of his primacy, possesses full and supreme authority over the universal Church, and if He can exercise it immediately and directly, He also has the right to send his Legates or Representatives wherever He pleases, and to entrust them with the exercise of papal authority in whatever measure He deems fit. But the Apostolic Nuncios are true representatives of the Supreme Pontiff, from whom their authority derives, to be exercised in the manner and form prescribed by Him. Consequently,

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if the authority of the Bishops must always be subject to that of the Pope, and can never be exercised against Him, it follows that episcopal authority can never be exercised against the prescriptions of the Apostolic Nuncios, especially since these are endowed with full authority, by which the Pope, in order to communicate with the faithful and the Bishops, is empowered.

[*Latin ed. p. 566*]

566 LETTER. It is evident that the will [of the bishop] and that which is contrary to the rules established by [the Apostolic Nuncio] cannot coexist, and therefore, the episcopal authority cannot be exercised against the prescriptions of the Apostolic Nuncio, especially since this [Nuncio], as an authoritative body through which the Holy Father communicates with the faithful and with bishops, perfectly knows the true intentions of the same [Holy Father]. To assert, as is done in the aforementioned article of the *Siglo Futuro*, that the right of the bishops surpasses in breadth and extent the right of the Nuncio, is the same as either denying to him the quality of delegate and papal representative, or wishing to define the functions of the same [Nuncio] with a criterion different from the will of the Pope, or, better yet, denying to the Pope the right to intervene in the affairs of the dioceses; all of which are contrary not only to the Catholic doctrine concerning the primacy of the Supreme Pontiff, but also to the very concept of delegation, since it is well known that the delegate acts in place of and as the person of the delegating authority, and that, as a matter of principle, his authority is one and the same as that of the delegating authority. It should also be noted that in the same article, it is asserted that the right of the bishops is superior to that of the Nuncio in matters concerning the relations between the Church and the State, without, however, the author pointing out that such matters, precisely because they concern the Catholic Religion, or Catholics within any civil authority by which several dioceses are governed, pertain especially to him who acts in place of the Roman Pontiff; and that the actions of the bishops, whether individually or collectively, within any civil authority, should be considered by the Supreme Church.

[*Latin ed. p. 567*]

"Regarding the relations with the interests of all of Catholicism, or of Catholics in a given State, within which are included several Dioceses, these belong in a particular manner to the Representative of the Supreme Pontiff; and the actions of the Bishops, whether taken individually or collectively in a State, must always be subordinate to the Supreme Head of the Church, and consequently to the one who represents Him." Therefore, the author of the article is mistaken when he asserts that the right of the Bishop extends to the internal and substantial relations which God has established between the two powers.

Turning now to the matter of fact, it is evident that the Apostolic Nuncio,

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as a delegate and representative of the Supreme Pontiff, has no other mission, nor any other authority, than that which the Supreme Pontiff grants to him; just as it is evident that only the Roman Pontiff, who delegates, can determine what the mission and authority of his Nuncio are.

But it is not true that the Roman Pontiff confers upon his Nunciaries a purely diplomatic mission, which pertains to public law, or the law of nations, without any authority over the faithful and pastors who exist in the principalities among whom these Nunciaries are accredited for the purpose of conducting affairs and maintaining public relations? Is it credible that the Supreme Pontiff sends his Nunciaries in the same way that civil governments send their Ministers and Representatives? Rather, from the Letters and Instructions of the Roman Pontiff, it is clear that the Apostolic Nunciaries do not have only a mission that pertains to the affairs of public law; but also one that concerns the faithful and religious matters, with authority.

[*Latin ed. p. 568*]

The Apostolic Nuncios have a mission, not purely diplomatic, but one of authority regarding the faithful and religious matters. Furthermore, the Apostolic Nuncio, as representative of the Supreme Pontiff, is not subject to either the faithful or the Bishops of the nation in which he resides; therefore, neither has the right to determine his functions, and much less to judge the legitimacy of his actions, which, moreover, must be respected by the faithful and the Bishops, save that they have the right to appeal to the Holy See, should there be reasons to believe that the Nuncio has exceeded the bounds of his mission, or has abused his representation. Therefore, how can it be maintained that the Apostolic Nuncio has a purely diplomatic mission, without any authority? No less reprehensible is the assertion of the journalist, namely, that the Apostolic Nuncio, precisely because he is a simple diplomat, can declare certain conditions to be good, or at least tolerable, which some believe to be detestable. If this assertion were true, it would, indeed, follow that the Holy See itself would be admitting as good and tolerable that which is truly ruinous to the Church and religion; for the acts of the Nuncio, if not disavowed or disapproved of by the Holy See, are considered to be valid acts.

[*Latin ed. p. 569*]

569) These [actions] can rightly be considered as his [the journalist's] own: this assertion is too injurious to the Supreme Head of the Church, and therefore deserving of all reprobation. And finally, the other assertion of the journalist is a contradiction, in which it is stated that the Nuncio, for human reasons, is prevented from manifesting the truth and upholding justice, while the Bishops enjoy a "greater freedom." The Nuncio, as a representative of an independent sovereign, has nothing to fear, just as he

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has nothing to hope from the government to which he is accredited.

Your Eminence, summon Mr. Nocedal; show him the observations contained in this dispatch, and invite him to correct in his newspaper his erroneous and injurious assertions, making it clear to him at the same time that, should he refuse to make such a correction or to make it adequately, the Holy See would find itself in the painful necessity of resorting to other means to that effect. After this, etc.

Rome, April 15, 1885.

L. CARD. JACOBINI

It is injurious, and therefore entirely to be condemned. — Furthermore, it is not consonant with reason that the same writer of the *Ephemeris* affirms that the Nuncio, in order that he may not reveal the truth, may not assert justice, is hindered by human considerations; while the Bishops, on the contrary, possess greater freedom. Indeed, the Apostolic Nuncio, as one who acts in the place of a sovereign subject to no one, has nothing to fear from the civil authority, to which the legates perform their duties, just as he has nothing to hope.

Therefore, Your Eminence, summon the writer, Mr. Nocedal; show him what has been discussed in these letters; gently urge him to correct what he has falsely and injuriously asserted in his *Ephemeris*; but if he, as is required by law, refuses to do so, then, by edict, the Holy See, albeit reluctantly, will impose the means that necessity suggests.

In the meantime, etc.

Rome, on the 15th day of April in the year 1885.

LUD. CARD. IACOBIMUS.

[*Latin ed. p. 570*]

From the Acts of the Council of Sarzana. Election Day, September 13, 1884. Session 7, Chapter 3, and Session 24, Chapter 18, concerning Reforms. A SUMMARY OF THE FACTS. In the town of Nicola, within the diocese of Sarzana, there exists a parish church dedicated to Saints Philip and James, whose rector is chosen from among the families of that place, as is said, by right of patronage; and the granting of the title is received from the cathedral chapter, as has been the practice from time immemorial. When, therefore, the aforementioned parish became vacant on November 23, 1881, the families, having obtained a postponement of time from the chapter, met on March 25, 1882, to carry out the election of a new pastor; and two priests were candidates for the position, namely, Celestine Cipollini, of the town of Nicola, and Santinus Rezzasco, of the town of Yernazza, who at that time was serving as the spiritual administrator in the aforementioned

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town of Nicola. And through the method of voting, the former received 116 favorable votes and 135 unfavorable votes; while the latter received 167 favorable votes and 86 unfavorable votes. The assembly therefore declared Celestine Cipollini to be elected, and on March 30, 1884, presented him to the chapter for canonical institution. The chapter accepted the presentation, and in the meantime appointed two canons to examine the matter; indeed, it also promulgated edicts, by which all those entitled to do so were called upon to object to the aforementioned election, if they so wished. And in fact, within the time limit established by the edicts, several families from the town of Nicola protested against the aforementioned election, alleging, in particular, that the freedom of the electors had been violated, that the form of the election prescribed by law had not been observed, and that some had been excluded from the group of electors.

[*Latin ed. p. 571*]

SARZANA. 571. Those who lack the right to present candidates do not have the authority to do so, and furthermore, the elected individual is deemed unfit to perform the duties of a parish priest. Believing this to be based on solid grounds, the Canons, having been delegated to examine the matter, and desiring to resolve the dispute amicably, immediately set to work to ensure that Celestino Cipollini would relinquish any right acquired through election, just as his predecessor had already done. However, all these efforts proved futile, and another Canon was added to the two aforementioned ones, and after the cause was fully investigated, a formal judgment was instituted before the Chapter, which, after hearing all the details of the matter, and after considering the testimonies of witnesses, the arguments of the parties involved, and other relevant information, on April 27, 1883, issued a final judgment, in which it declared that the election was valid, and simultaneously ordered that a new election be held within four months. Considering that this judgment was not to be accepted, the party supporting Celestino Cipollini appealed to the episcopal curia. And when, on April 2, 1884, the Chapter's judgment was confirmed, and it was again declared that Celestino's election was valid and that a new election was to be held, an appeal was made to the Sacred Congregation of the Council.

Dispute Synopsis. It was initially noted that the Chapter of the cathedral church of Sarzana has the right to confer the canonical institution to the benefice of Nicola, as well as to certain other benefices. This point is undisputed, and it is clear from the records of the episcopal visitation and from the well-known practice. It seems that the Chapter also has the right to inquire into, and indeed to judge, all matters closely connected with the granting of the canonical institution. And since, in the case at hand, the canonical institution is to be conferred upon a *paterfamilias*, it is clear that the Chapter cannot properly fulfill its duty unless it first determines the legitimacy of the presentation and the suitability of the presented individual.

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THE JUDGMENT OF THE CURIA APPEARS TO BE CONFIRMABLE.

[*Latin ed. p. 572*]

572 SARZANEN. that it might be able to judge. Furthermore, it appears that all difficulty in this matter is entirely removed by the Chancellor of the Episcopal Curia, who testifies: "The Chapter of the Cathedral has, from time immemorial, been the judge of first instance in matters concerning benefices, to which their collation pertains." Now, if it is established that the Chapter has, with full legal right and merit, handled such a case up to a final judgment, which was subsequently confirmed by the Episcopal Curia, then, by the very fact of this, a peremptory argument arises against the appellants, namely, the principle of *res judicata*, arising from two concurring judgments; *Devoti Instit. Can. lib. 3 tit. 15 de Appell, in nota 5 ad n. 7*. The Sacred Congregation of the Council also taught this in the case of *Castrimaris* on April 5, 1884, where, due to the two concurring judgments, the appeal was rejected, and the case was ordered to be closed regarding the restoration to the previous state. (1) From these things, it clearly follows that the appellants should not be heard, unless it is clearly established that there are grounds for restoration to the previous state, namely, that the *res judicata* is either null or unjust, as is indicated by the text in Chapter 1, section 4, paragraph 1, of the *Institutiones* concerning restoration to the previous state; in the sections concerning *rejudicatio*, section 17; and in the sections concerning restoration to the previous state, sections 1 and 2. However, as regards the alleged injustice, no argument is presented by the appellants that can undoubtedly demonstrate that some law has been disregarded or violated, nor are there documents or testimonies that clearly indicate that the judgment is based on falsehood. Moreover, nothing new is presented that could reasonably suggest that the circumstances of the case have changed, or that new laws have been introduced. Furthermore, little can be said regarding nullity, since all the acts of both judgments appear to have been carried out in accordance with the law, and nothing is gained by the objections that are commonly raised against one or the other judgment. Indeed, these objections can primarily be referred to the following: 1. That the Chapter exceeded its authority in judging the suitability of the elect, and did not render a collegial judgment, because only six Canons were present at the convened elections, one of whom was also excluded from the vote.

(1) See Volume XVII, page 65.

[*Latin ed. p. 573*]

SARZANEN. 573 He abstained from giving his opinion and from subscribing to the judgment: 2. The Vicar General, who confirmed the previous judgment, was deemed to be an incompetent judge, because he himself is not a doctor in Canon Law; and because he is the uncle of the procurator

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for those who opposed the election. However, neither of these objections appears to be valid. Firstly, when the chapter meetings have been regularly convened, it matters not that only six canons were present to give their opinion, and that one of them also abstained from giving his vote. Indeed, everyone knows that any matter is considered to have been decided by the chapter when the majority of those who were summoned and attended agree on the same opinion. And it is expressly stated concerning those who attended that, as De Angelis teaches in *Praeelectiones Iur. Can.*, book 3, title 11, number 5: "when all have been summoned, if some do not appear, the others can proceed with the matter," and they should consider the absent ones as having not attended, and thus "have renounced their right for that occasion, as the *Glossa* states" in chapter 42, verse concerning those who desire an election. Furthermore, it is sufficient that *merus* three are present for the chapter to be constituted, as the common teaching of the Doctors states – Ceccoperius, book 4, title 2. Secondly, it does not matter that the chapter judged the suitability of the elected. For such a judgment, among other things, was cumulative and concomitant with another concerning the validity of the election itself; it did not exceed the limits of the facts emerging from the records of the case and known to all; it was promoted and expressly requested by both contending parties. Therefore, it is rightly inferred that the chapter remained within the limits of its authority, and that a judicial agreement intervened between the parties, which was within the competence of the chapter, as was known in this matter. Furthermore, another objection is raised, namely, the incompetence of the judge, based on the lack of a doctorate and on the consanguinity with the procurator of one of the contending parties. Indeed, concerning the first point, it is a fact that the Vicar General appointed D. Mario Gaggioli, a doctor in Canon Law, as an assessor. As for the second point, it is worth noting that...

[*Latin ed. p. 574*]

574 SARZANEN. Nowhere in the law is a judge declared incapable of judging due to consanguinity or affinity, but rather, one must only take care that he who has petitioned in a certain cause is not subsequently the judge in the same case. *L. Eos in princ. Cod. de Appell. L. Praetor de iurisdict, omn. iudic, Cap. Nullus umquam 1. et Cap. Nullus introducatur. 2 caus. 49 4.* Truly, it is the case that the parties in a dispute may have the power to refuse a suspected judge; but they cannot propose an exception of recusation except within 20 days from the presentation of the writ and before the commencement of the dispute; *Auih. Offeratur Cod. de lite contest. Cap. quod suspecti caus. 3 q. 1.* Those who consent to the judge and renounce the exception of recusation are considered to have done so, as the Glossary teaches in the chapter "Inter de sent. et re iud. v. Subeundo." Indeed, the appellants, although summoned since August

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7, 1883, by order of the Vicar General, and therefore thoroughly aware of the person of the judge and his relationship with the opposing party's advocate, nevertheless proposed the exception of recusation only shortly before the final judgment, as the records of the case show. Therefore, it does not seem that there is any ambiguity concerning the justice and validity of the judgment; and therefore, perhaps, there is no place for an appeal in this case. But even this, with a slight omission, seems to present circumstances that entirely suggest confirmation of the judgment of the Sarzana court. To make this clearer, certain things must be noted that are required by law in the matter of elections. First of all, all those who have the right to vote must be summoned; *Cap. 18, 35 et 42 de élection.*; so that if one or the other is overlooked, he can take action to annul the completed election; *Glossa in cap. 8 de elect. in 6; Fagnanus in cap. 42 eod. cit. num. 38; Reiffenstuel in tit. de elect. num. 115.* Furthermore, any election must be entirely free, so that any other kind of election is, by law, null; *Cap. 14 de elect. Cap. 3 eod. tit. in 6 §.* Moreover, "there is an election only when freedom is taken away from the one who is to be chosen." This kind of freedom is also considered to be lacking in the case of subornation.

[*Latin ed. p. 575*]

SARZANEN. 575 which are improper practices, threats, insults, gifts, promises, and other means, arts, and methods illicitly employed, sufficient to influence, or morally compel, someone to give their vote to a particular candidate. Chapter 3 concerns those things done by force or fear; Chapter 26 concerns elections. If an election is to be held for offices, as per chapter 42 on elections, and the prescribed form of scrutiny is used above all others, then the following, among other things, must be observed under penalty of nullity: three scrutineers must be chosen from the college, or from those who ought, and who are willing and able to participate; the votes of each individual must be collected secretly, individually, carefully, and in order; finally, the votes must be counted one by one, zeal to zeal, and merit to merit. Thus, as is commonly taught by John Andrew in the aforementioned chapter 42 on elections, number 28. Furthermore, since the form of election prescribed in the well-known chapter 42 on elections applies to those offices, from whose vacancies the pastors remain widowed for the Church, as is stated in Ferraris, V. Electio, article 1, number 1, added, and also decided by the Sacred Rota in cases 558 and 573, number 1, it seems clear that the same form of election should also have been observed in this case. For, as Reiffenstuel states in Reg. IO iuris, number 1, under the name of pastor are also included the parish priests; and in common usage, the parish priest is also called the bridegroom of the parish church, and this, while vacant, is said to be widowed. With these things established, it seems easy to demonstrate that a completed election can be vitiated by such faults that it must be declared entirely null and void. Indeed, it was

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noted that the list of candidates was not promulgated at the proper time, since it was not affixed to the doors of the parish church, except on the very morning in which the election took place, and therefore the first condition of a canonical election was lacking. Those who attempt to weaken the force of this argument in vain appeal to the observation that the aforementioned list remained affixed in the municipal building for the days of March 21, 22, and 23, 1882. This, however, is entirely false, as the accusers demonstrate: first, because the list was not affixed by the municipal officials.

[*Latin ed. p. 576*]

576 SARZANEN. The decree was not approved until the 22nd, and consequently, it could not be promulgated until the following day; furthermore, the municipal councilor, John Mary Francis, under oath, testified that the aforementioned decree had not been promulgated at all in the municipal building. This testimony was deemed of the utmost importance, as the witness was qualified, well-informed, and legally examined at the request of the parties involved. However, more serious matters are brought forth by the plaintiffs, namely that some individuals who were deprived of the right to vote were included among the electors, while others who possessed this right were overlooked. These individuals, having immediately complained and protested about this, state that no one will doubt that the election was declared invalid by law and by merit. Indeed, the plaintiffs maintain that the entire process should be considered null and void, because even non-electors voted, and the others from the assembly compromised or consented to this. Furthermore, the plaintiffs assert that freedom was lacking in the election, presenting numerous witnesses to support this claim. Indeed, the witness Francis heard Boniface Barbieri, the father of the Syndic, utter threats against those who had passed through his fields, and against those who had denied their vote to the priest Cipollini. The same testimony was given by Dominic Belletti, and many others. The plaintiffs state that there is no room for doubt about the gravity of these pressures, if one considers that the Syndic was the principal instigator; that Vincent Bottiglioni, being opposed to the priest Cipollini, was dismissed from the same fields by Barbieri, of which he was a tenant; and that James of Cervia had his small parcel of land, belonging to a poor person, taken away from him, which was subsequently returned by the Syndic's wife, saying: "My husband will see you during the collection of votes." The plaintiffs attempted to confirm these facts by stating that the aforementioned methods of coercion were employed even after the election, in order to induce the subscribers of the appeal to retract their names. Indeed, as the witnesses Carchini and Angelini further testify, the Syndic summoned these individuals, and intimidated them, and even threatened them with legal action, in

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order to achieve the desired retraction of the subscriptions.

[*Latin ed. p. 577*]

SARZANEN. 577. Furthermore, it appears that the substantial form of the election was also violated. Indeed, neither the word nor the phrase "election" appears in the records. Moreover, all witnesses summoned by the parties completely contradict the claim of a secret collation of votes. Finally, it is impossible not to note certain observations regarding the suitability of the priest Cipollini for the care of souls, since the Council of Trent, Session 7, Chapter 3, expressly states: "Lower ecclesiastical benefices, especially those pertaining to the care of souls, must be conferred upon persons worthy and capable, and who reside in the place and are able to exercise the care themselves... otherwise, the collation or provision is entirely invalid." And the Sacred Congregation, in the decree of Gallemart in Annotations to the Council of Trent, Session 5, Chapter 2, decreed: "It is necessary to urge pastors to personally undertake and not through substitutes, those duties to which they are bound." Furthermore, the priest Cipollini himself, wishing to be presented for the election, wrote that he hoped to fulfill the duties inherent in the office with the help of a suitable parish priest. He confessed that he could not assume the duties of a parish priest due to illness and had only preached once. Moreover, the parties reported that he was unfamiliar with ecclesiastical duties, that he neglected the administration of the sacraments, and, what is more lamentable, that he had not once assisted those departing this life without providing them with the consolations of religion; because, when the parish priest was gravely ill, no other priest was available, except Cipollini, who refused to perform this duty, although he was obligated to do so, being a priest holding a benefice to which the obligation of assisting the parish priest was attached. THE JUDGMENT OF THE COURT APPEARS TO BE FLAWED. On the other hand, it was argued that the judgment of the Court should have been entirely revoked, since it confirmed a previous judgment, pronounced in the name of the Cathedral Chapter, which was manifestly infected with nullity and injustice. Indeed, it is evident that if the first judgment cannot in any way be sustained, neither can the subsequent judgment, which confirms the former, be maintained. Aeta, Vol. XVII, page 234.

[*Latin ed. p. 578*]

578 SARZANEN. And first, concerning the nullity of the judgment of the first instance, they declared it to be most evident on the basis of the principle of incompetence. This case is truly unique concerning a judgment of the episcopal court, pronounced in the second degree of jurisdiction, because certain Canons of the cathedral chapter, sitting as a tribunal, had decreed that a true judgment had been instituted before them, and, in accordance with the order of law, had issued a judgment concerning the suitability

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of a candidate presented by a lay patron, for a benefice with the care of souls attached to it. By doing so, those Canons had usurped the exercise of contentious jurisdiction. For it is clear to all that all jurisdiction, whether ordinary or delegated, must belong to someone. Indeed, neither ordinary nor delegated jurisdiction can exist in a chapter concerning contentious matters, especially those pertaining to the Bishop in a privative sense. For, concerning ordinary jurisdiction, it is acquired in only three ways: either by a privilege of the Pope, or by law or canon, or by a legitimately prescribed custom; Ferraris, Jurisdictio, n. 12. The first two ways are excluded, as they are contrary to the practices of Chapters, so the third remains. But a legitimately prescribed custom cannot exist in those matters which are expressly reserved to the Ordinary by the sanction of the law, so that he cannot delegate others to exercise it. It must not be overlooked; the right belonged to the Chapter to grant the institution to the collation, and therefore the right belonged to the Chapter to inquire into the legitimacy of the election and the suitability of the candidate. For, while the institution of a collation pertains to the Ordinary, the local Bishop, in the place where the benefice is located, as from Cap. Omnis basilicae 10, reason 16, q. 7, Cap. eco frequentibus 3, concerning the institution, Cap. cum ex iniuncto 12, concerning heretics, and according to the common opinion of authors; while the granting of the institution of a collation can pertain to the Chapter, if it is completed by a privilege, or by a foundation, or even by custom, it could have happened that, if the matter concerned a simple benefice, the Chapter would have the right to grant the institution of the collation, either by privilege, or by foundation, or even by custom. But the matter is different in the case of a benefice...

[*Latin ed. p. 579*]

SARZANEN. 579. The benefit of the care of souls is attached, which must only be conferred by a legitimate institution. The right to grant such an institution belongs exclusively to the Ordinary, and not to inferior prelates, and it can only be granted after the candidate has been found suitable by the pro-synodal examiners. The Council of Trent, in Session 7, chapter 13, concerning reform, decreed that no cleric should be instituted, even under the pretext of "any privilege or custom, even if prescribed from time immemorial," unless he had first been examined by the local Ordinary and found suitable. And the same Council, in Session 24, chapter 18, concerning reform, prescribed that if a lay patron presents a candidate, that candidate must be examined by the same deputies as mentioned above, and must only be admitted if found suitable. Therefore, the judgment regarding the suitability of a candidate is exclusively reserved to the pro-synodal examiners, and it is upon their testimony regarding suitability that the right to grant the institution belongs to the Bishop, as taught by Benedict XIV in *De Synodo Dioeces*, book 4, chapter 8, number 9. Therefore, it is clear that

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the rights of the Ordinary of the first grade have been violated, because the Chapter judged the suitability of the elected parish priest, claiming for itself alone the right to grant the canonical institution in the parochial benefice. The judges, however, found a defect in the suitability, based on the testimony of those who impugned the election, completely disregarding the testimonies of witnesses presented by the defendants. This argument formed a significant part of the judgment. However, the Holy Congregation [Sacra Congregatio] condemned this in a definitive resolution of the case concerning ordinary jurisdiction or exemption, which was heard before the particular Congregation on November 27, 1856. Of the twenty doubts that were proposed, the ninth was as follows: "Whether the right of examination and of granting a legitimate institution, with the care and in matters pertaining to theology and penance, belongs to the Bishop or to the Chapter in this case." And the response was: "To the Bishop." Since this is the case, then...

[*Latin ed. p. 580*]

880 SARZANEN. They have usurped the jurisdiction of the Chapter, which, even when exercising its rights according to the law of canonical institutions, is competent. Therefore, the sentence of the first instance suffers from manifest incompetence, and the judgment of the Court, by which the previous sentence was confirmed, is infected with the same defect, as is the same argument used by the first judges. Furthermore, it cannot be considered a judgment issued by the Chapter, but rather it should be attributed only to the individual Canons, as individuals, who signed it, since no proof or indication exists that the judgment was truly the act of the Chapter itself. Nothing has demonstrated that on April 27th, the Chapter, duly convened, was present at the reading and publication of the sentence; for it is one thing to be present at the discussion of a case and to express an opinion in the judgment, and quite another to be present at the reading, when it is made public, of a sentence already completed. It is certain that on April 27th the sentence was published, but it is not certain that the Chapter, duly convened, was present at the discussion of the case, or that it issued the resolution. Therefore, rather than considering it a judgment of the Chapter as a college, it should be considered a judgment of the individual Canons, who, having signed the sentence, do not constitute a college, and which, having been manifestly issued in the name of the Chapter, also contains a defect of nullity. But the sentence suffers not only from nullity, but also from injustice. For it was manifestly unjust to allow an ineligible person to be elected, since witnesses, among those who had appealed to the Chapter against the election of D. Cipollini, had expressed an opinion on his suitability, and not all of these witnesses, but only some, expressed their particular opinion, either without any positive argument, or for reasons that contain manifest falsehood. Furthermore, when the question is one of suitability,

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the Sacred Congregation of the Holy Office has shown how to proceed in the case of the Theologian of the day of December 1, 1866: in which case, when it was a question of the election to bestow the Theological chair, in favor of a certain beneficiary, whether or not to admit him, especially because of the presentation...

[*Latin ed. p. 581*]

SARZANEN. 581. Concerning the doubt regarding suitability, he expressed concern. The Sacred Office judged that the doubt "Whether the election, favored by the NNs, can be sustained for a theological canonry in this case" should be resolved with the response: "The presentation and institution should be sustained with the favor of the NNs, after a test of suitability has been made." The injustice, it was noted, was no less evident when the elected was compared to those who are compelled to renounce their position due to a title that the wicked populace detests. Beginning with this second point, they argued that there was no equality from case to case. Indeed, since Celestine had received 167 votes, while his opponents had only 82, it could be safely asserted that the greater and healthier part of the people adhered to him. Regarding the defects of the election, it was noted that a judgment had been rendered concerning them as if an election of a prelate had taken place in this case. However, it was clear that there was a difference between the election of a Bishop, which is carried out by the Chapter, or the election of a prelate to be filled by religious, and the election of a parish priest carried out by the people. In the former, according to the new law, secrecy must be maintained when the method of scrutiny is used, but not in the latter, which is intended to proceed according to the common law, as testified by Cardinal De Luca in Annotations to the Sacred Council of Trent, Disputation 38, numbers 1 and 2, and in De Jure Patrici, Disputation 61, number 24. The defect of contempt should be considered of greater importance, if it existed. However, it is established from the records that on March 19th, a notice was posted on the church door, stating that the fathers of families should come to receive their ballots on March 21st, 22nd, and 23rd. It is also established that a list of the fathers of families was published and submitted to the examination of the electors. It is established that of those who were present, no one claimed that anyone else should not have been admitted to vote. It is established that one, Angelus Verrucchia, complained of contempt: but not directly, because he could not demonstrate that he had been rightfully co-opted among the fathers of families; but indirectly, that is, because some, whom he said were in the same condition as himself, were admitted to vote. In the judgment of the diocesan court, it is certain that...

[*Latin ed. p. 582*]

582 SARZANA. It was reported that certain individuals from Verrucchia

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had acted with contempt during a suitable time; and that the appeals, together with the judgment of the second grade, had been brought to light for the first time: for previously, they had never appeared in the records, nor had the judgment of the first grade ever been mentioned concerning them. However, it was discovered that among those presenting their votes, certain outsiders were present; it was decided that this did not invalidate the election; as De Luca, *De Regul.*, book 5, chapter 3, number 13 states: "And concerning the intervention of monks who were not in the monastery," the custom of the monastery justified this. Furthermore, since the votes had been given in agreement, this intervention was not of consequence: for a mixture of those who do not have a vow does not contradict an election concluded by others; the difficulty arises only when such votes, being illegitimate, would conclude the election itself. Otherwise, if these individuals had not intervened, the proceedings would have been properly concluded. Having presented these points for both sides, the matter to be resolved was: Whether the judgment of the episcopal court of Sarzana should be confirmed or overturned in this case. RESOLUTION. The Sacred Congregation, having knowledge of the matter, on September 6, 1884, decided to respond: The judgment should be confirmed. FROM WHICH THESE CONCLUSIONS ARE DERIVED. I. According to common law, two concurring judgments render the matter judicially decided: so that the appellants should not be heard, unless it is proven that the judgment is null or unjust, and that these are held as grounds for a complete reversal. II. A complete reversal should be granted whenever it can be demonstrated that a law has been violated or disregarded, or that documents or testimonies, upon which the judgment is based, are manifestly false. III. In this case, it appears that none of these things were present; for the appellants were unable to prove a violation of any law, nor that the documents upon which the judgment is based are false. IV. According to common law, the institution into benefices is...

[*Latin ed. p. 583*]

SARZANEN. 583 cases were referred to a single Bishop, after examiners appointed for the synod had presented a suitable candidate. V. It was deemed permissible for the matter to be brought before the Chapter, according to the immemorial custom, to judge, in the first instance, questions concerning simple and curatial benefices, the collation of which pertains to the aforementioned Chapter; thus, the cathedral Chapter constitutes a separate tribunal from the tribunal of the Ordinary, and judges the suitability of the candidate. APPENDIX. We add, similar to appendices commonly found, a decree of the Sacred Congregation concerning the questions of parish priests. Such rare questions, already mentioned, are recorded in the acts of the Council, and therefore, on February 4th of the following year, concerning the cause of elections and

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ephemerides, although not recently, we refer to it. On September 18th, 1875, and 1876. VENETIAN PAROCHIAL COMPENDIUM OF FACTS. In the year 1864, a certain Barbini, and the parish of St. Donatus, located in the *vidua* (Culmore), had a pastor named Tommasini. At that time, families from the parish entered into a conspiracy to elect a priest named Tommasini to this benefice, even using the sacramental confession as a means to persuade the reluctant. It is also reported that the Vicarius general promised to ensure that Barbini would obtain the parish, even if Tommasini held a plurality of benefices. Upon learning of this conspiracy favoring the priest Tommasini, the Vicarius of the parish, Pavanelli, prepared an opposition to this election, and urged Tommasini to call seven heads of families to the meeting concerning the vacant parish. The parish priest Barbini, despite his reluctance, accepted the candidate, who, according to the wishes of those present, and although unwilling, began his ministry. However, Pavanelli considered that the candidate lacked the necessary qualities for the care of souls, and with two votes, he opposed the election. At that time, Vicarius Pavanelli left nothing untried, so that the greater matters...

[*Latin ed. p. 584*]

APPI Barbini, while the other was for Tommasini, sought to avoid popular movements, methods which are not always conducive to those who associate with such elections. However, Tommasini received 130 votes, while Barbini received 123. The Patriarch, having given certain letters, requested declarations regarding the alleged simony, since both the presbyter Barbini and the other party were accused before the ecclesiastical court: namely, that neither had spared money nor threats in order to overcome his opponent.

After a process conducted before the court, on May 31, 1865, a judgment was rendered; the following two questions were proposed:

I. Whether and how the judgment, having been rendered, can be considered immune from simony; and whether Barbini, although a parish priest in the present parish, can nevertheless present himself to a new election, prepared to abandon his current parish, in order that the votes might be favorable to him.

II. Whether it suffices to renew the election, or whether a new competition must be indicated, and whether Barbini and Tommasini, already approved, should be included in the new competition, and how all should be distinctly notified of the new election.

RESOLUTION. The Sacred Congregation of Bishops and Regular Canons decided to respond as follows: "Regarding the first [question]: a new competition must be instituted; and considering the peaceful possession of the other parish, which Barbini has obtained, which should be approved by the Most Reverend Ordinary, if any are to be subjected

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to the new election, together with Tommasini, who has already been approved."

On September 18, the Congregation of Bishops and Regular Canons responded: "There is a place for a new election, or presentation, among those approved by the Ordinary, including Henry Barbini and Marcello Tommasini."

This resolution was delayed for more than a decade for various reasons, and finally...

[*Latin ed. p. 585*]

585. MELEVITANA: NOTHING PRECLUDES. January 24, 1885. Session 24, Chapter 1, concerning reforms. SUMMARY OF THE CASE. Francis, a native of the diocese of Melevitana, desired to marry Marianna, a widow; and all preparations for the marriage were already made, when Francis's parents interposed an impediment, which they call "nothing precludes," to the celebration of the marriage before the ecclesiastical court. First, they asserted that Francis was related to Marianna by affinity; then, after obtaining a dispensation from this impediment, so that the marriage might not be celebrated, they alleged a difference in age between the bridegroom and the bride, as well as the danger of easily arising disagreements between the families of the betrothed. The matter having been thoroughly discussed before the Court, a judgment was rendered on May 10, 1884, which was highly favorable to Francis. Thus it was decreed: "We declare and pronounce that Francis is absolved from the aforementioned impediment, and is free to contract marriage." However, his parents did not relent; but they appealed to the Sacred Congregation of the Council. SYNOPTIC DISCUSSION. THE RIGHTS OF PARENTS. It was observed *ex officio* that the parents of Francis were justified in opposing his marriage to Marianna. For, by natural law, parents have the right and obligation to properly educate and govern their children, especially when it comes to marriage, so that young people, rather than being led by the maturity of reason, do not enter into unions based on rash decisions and passions, from which countless evils, and especially the dissolution of souls, arise. Both civil and ecclesiastical law confirm this principle of natural law, requiring the consent of parents in the marriages of their children, as stated in L. 2 and 18 ff. De ritu nupt., Canon 1, and Canon No-.

[*Latin ed. p. 586*]

586. Meleitanus, in three books, three causes, book 3, question 5, wherein Nicholas I, responding to the demands of the Bulgarians, stated: "A contract is valid by the consent of those who enter into it and those who have power over them." Nor does this seem to contradict the decree of the Council of Trent, session 24, chapter 1, concerning reform and marriage: for the Fathers there stated that marriages entered into without the consent of

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the parents are valid; it must therefore be considered that they have left intact the full power of the parents, as before, to prevent such marriages, according to the common rule of law, which says, "Many things are prohibited which were formerly permitted." And this is even more apparent when it is immediately added: "Nevertheless, the Holy Church of God has always detested and prohibited these [marriages] for most just reasons." Therefore, Fagnanus, in chapter "In tua num. 23 De Despons. impub.," explaining the Tridentine decree, says: "Indeed, although these things may be so with regard to the validity of marriage, it is clear that, with regard to the present matter, these unions are so abhorrent and offensive to the sacred canons that they are called adulteries, fornications, and rapes; therefore, since both the Church and civil law so abhor them, it does not seem right that a daughter should be allowed to enter into marriage with someone to whom her father expressly and for a legitimate reason objects." However, it is indeed true that parents must have legitimate reasons for exercising this power, and such reasons seem to be quite present in this case. Firstly, there is a bond of affinity between the betrothed, since Marianna's fiancé is the nephew of her aunt. But can it be objected that a dispensation was granted from this impediment? For the parents contend that they were laboring under the bond of obreption, because if the Roman Pontiff had learned of their dissent, He would probably have denied them grace. However, the value of a dispensation is small, and the affinity, which is not lacking from it, still introduces, according to some, a certain inequality between the betrothed. But a greater difficulty has arisen from the fact that the betrothed...

[*Latin ed. p. 587*]

In Lucca, this situation was observed, and a significant difference in age existed between the parties: Francis was thirty years old, while the woman was fifty. Therefore, it is justly considered that the son regrets the marriage too late, given the advanced age of the woman, who may not be able to bear children. Furthermore, the inequality of the parties provides a legitimate reason for preventing the marriage of children, as stated by Schmalzgrueber in *De Despons. impub.*, numbers 78 and 84, and by Vagnereck in chapter 1 of *Tua*, title English, section 2, number 0, and by Henoch in *Consilia*, 69, number 34. Moreover, they add a further reason of great importance, believing that perpetual disagreements will arise between the spouses' relatives from such a marriage. Their assertion deserves consideration, both because they have the good of the children solely in view, and also because they know the character of the bride and her family very well. Furthermore, the Doctors hold that, due to the fear of such discord, parents not only can, but indeed ought to prevent the marriages of their children. Let the praised Schmalzgrueber be heard, who, in the aforementioned passage, number 84, speaking of such marriages of children, says: "Then the

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parents can, and ought, to prevent it, even seeking the authority of the ecclesiastical judge, to whose office it belongs to take care that such marriages are not contracted, from which misfortunes and unhappy outcomes often arise." This is in agreement with Cardinal De Luca, volume 3, disputation 22, article 17, Pignatelli in *Consult. Can.*, volume 4, consilia 11, and Piton in *Discept. Eccl.*, disputation 52, number 87. Once the parents' opposition is shown to be based on legitimate reasons, it seems that the judgment of the Curia will spontaneously be to invalidate the marriage. For it is the duty of ecclesiastical authority to use all means to prevent a marriage from being celebrated, from which unhappy outcomes and serious family disagreements may arise. THE SON'S RIGHTS. Francis, however, requested confirmation of his position, arguing that, according to the sacred Canons, the consent of the parents is not necessarily required for the marriages of their children, and that the opposition of his relatives is entirely unreasonable. To demonstrate the first point, it is sufficient to cite the opinion of one Doctor, Thomas.

[*Latin ed. p. 588*]

588. The opinion of Meleto, who in question 2, chapter 114, article 5, teaches that neither servants are bound to obey their masters, nor are children bound to obey their parents concerning the contracting of marriage or the observance of chastity, or anything similar. For, as soon as someone reaches the age of puberty, if they are of free condition, they are no longer under the power of another with regard to matters concerning their person; therefore, even against the will of their parents, a marriage can be entered into, or one can enter religion, as the same Doctor resolves in the 4th sentence, distinction 23, article 3, ad 1, and distinction 38, article 1, ad 2. These principles, the Council of Trent firmly adhering to them in chapter 1 of the 24th session concerning reform, solemnly confirmed the freedom of children in this matter, and condemned with an anathema both those who maintained that marriages entered into by children of the family without the consent of their parents are invalid, and those parents who would presume to make such marriages valid or invalid: the prohibition mentioned above seems to refer to clandestine marriages. With such a wise disposition before him, the Holy Office, on several occasions, permitted children to enter into marriage, even when parents and relatives opposed it, as can be seen in several instances in Florentina, January 12, 1726. This concerned a certain Thomas Delconte who wished to marry a certain Camilla Manganella, but the mother, brother, and other relatives opposed the marriage due to the disparity of condition, and especially because the maternal grandfather of Camilla had been condemned for three years to hard labor in the port of Liburnia for certain thefts. However, after the betrothed were forbidden by the General Vicar to contract the marriage under pain of excommunication, they appealed to Rome, and after the

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facts were transmitted and the cause was known, the response was that the marriage should be entered into. Therefore, since parents cannot, either by the Council of Trent or by the practice of the Holy Office, prevent the marriages of their children, it is clearly evident that the decision of the Tribunal must have its full force. Franciscus states that this should be permitted with greater right, because the dissent of the parents is unjust and vexatious, so that it implies deceit and calumny, as stated in the final chapter, from the words "Ma-".

[*Latin ed. p. 589*]

MELEVITANI 589 concerning impediments to marriage, specifically concerning the impediment of disparity of age. This is easily understood if the reasons presented are considered more fully. For the affinity arising from dispensation is removed, and the difference in age is less significant, since the Church permits the marriage of a young person with an older person. The condition of the *Filius Ecclesiæ* is that he should in no way be dependent on his parents. Parents often present the fear of discord, and constantly assert, without any argument to demonstrate it, that they are unable to manage. But if some Doctors of Canon Law grant this power to parents because of the inequality of the spouses, and the fear of discord, they nevertheless require that inequality to be such that it would bring disgrace and a stain of infamy upon the family, and that they foresee very serious animosities, so certain that no means could be found to mitigate them. See Sánchez de Matrim, book 4, proposition 26; Outierez, book 1, chapter 2, number 18; Dicastill, disputation 4, number 18; Abbas Panormit., in chapter "Requisivisti," number 4, on betrothals. Therefore, when in the case of betrothed persons, inequality and a reasonable fear of discord are entirely absent, it seems to us that the judgment of the Curia should certainly be confirmed. Having considered these matters from various perspectives, the following question was posed: Should the judgment of the Melevitana Curia be confirmed or rejected in this case?

RESOLUTION. The Sacred Congregation, after deliberation on January 24, 1885, decided to respond: "The judgment should be confirmed, and indeed affirmed further." (1) See pages 440 and 455, Volume XIV. The conclusions that we have noted in this matter could not differ from those that we have gathered in Volume XIII, (1). We deemed it necessary to add nothing.

[*Latin ed. p. 590*]

S90 RIPA TRANSONE. CONVOCAÇÃO. Dia 7 de março de 1885. Sessão 24, capítulo 18, sobre reformas. Como a igreja de Santos Justino e Cipriano na cidade de Colonnella, um município que, como patrono, tinha o direito de apresentar três padres ao Bispo, preferiu abster-se desse direito, para que o Bispo pudesse, de acordo com os cânones sagrados, nomear um reitor

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adequado para a igreja vaga. Portanto, o Ordinário convocou uma convocação em 18 de agosto, estabelecendo um prazo de quinze dias para que aqueles que desejassem inscrevessem seus nomes na lista de candidatos; e tal edito foi solicitado a ser publicado também nas dioceses vizinhas, para que o município fosse informado, o que o Arcebispo de Teramo, no entanto, se recusou a fazer, porque ia contra o costume vigente ali. Nenhum candidato apareceu no tempo devido, sendo o prazo encerrado em 2 de setembro; porém, Anthony, residente na cidade de Civitella di Benezone, na diocese de Teramo, enviou sua petição ao Bispo no dia 1 do mencionado mês, a qual foi recebida por este no dia 3. No entanto, em 5 do mesmo mês, o Ordinário informou a ele que não poderia aceitar suas preces, tanto porque o prazo já havia expirado, quanto porque havia convocado Anthony Vagnoni para um exame, prometendo a este que, se fosse considerado adequado pelos examinadores, obteria a paróquia sem qualquer concorrente. Anthony, considerando-se injustamente tratado por tal rejeição, apresentou um recurso ao S. C. C. (Supremo Tribunal da Assinatura) em 4 de outubro, solicitando que fosse admitido a participar da convocação, pois sua petição havia chegado intacta, e se tivesse ocorrido um pouco mais tarde, teria sido por um impedimento legítimo; portanto, ele solicitava que o S. C. C. se dignasse a suspender a nomeação da paróquia e, em seguida, decretasse a nulidade da mesma, por ter sido realizada após a objeção do candidato. RESUMO DO CASO.

[*Latin ed. p. 591*]

RIPANA, 591, and concerning the violation of sacred canons regarding the concurrence of candidates. The Bishop, when questioned about the matter, responded that, since the deadline of September 2nd had passed for the concurrence, he had sent letters to Anthony Vagnoni, and had also requested him to present himself for the concurrence, with the certainty of obtaining the parish, having obtained the approval of the pre-synodal examiners. However, the Bishop continued, he had refrained from admitting Vagnoni to the concurrence, because he knew of his excellent qualities for governing that same parish; while he himself felt that he should abstain from the concurrence, considering himself unworthy. Nevertheless, he wished to be more certain about the morals and other qualifications of the priest who was opposing the concurrence; and he discovered that the latter had acted in ways that were entirely unbecoming of a priest. Having learned this, he rejected Vagnoni from the concurrence, alleging that his petition had arrived after the deadline had expired. Furthermore, he added that the aforementioned priest was unpopular with the faithful, and that the municipality had therefore implored the Curia to insist on rejecting him from the concurrence. It should also be known that Vagnoni was subjected to an examination on September 22nd of that same month, and that he received letters of appointment from the Bishop that same month, by which

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he was able to obtain the parish of Riez in the following month of January.

A Synopsis of the Dispute. WHAT APPEARS TO BE AGAINST THE BISHOP.

The granting of the parish by the Bishop seems to be highly questionable. For the Doctors hold that when someone, being hindered by a legitimate impediment, petitions to be admitted to the concurrence after the time specified in the edict has passed, but the situation remains unchanged, he cannot be rejected, even if other candidates are present; otherwise, he himself might appeal from such a denial. (Garcias de Benef., part. 9, cap. 2, n. 206; Ferraris V. Concursus, art. 5, n. 17; Gonzalez, Gl. 9, §. 1, n. 115 and 183; Reclusius de Concurs., p. 1, tit. 3; Nassabr. in Praxi hah. conc. requis. 3, dub. 2; Mareschot. Variar, resol., lib. 1, cap. 52, n. 59; Argirò, lib. 7, discept. 25, n. 22 and 33). And rightly so, for...

[*Latin ed. p. 592*]

592 Let Ripatransone seek the favor of the Church, for it is of the greatest interest that more opponents should be present. Hence, Garcías, cited above, observes: "When the matter at hand concerns the thing and the utility of the Church, this must be considered, and the deadline is not set so that others may not be admitted afterward, but so that it may be known that there are no more candidates." This opinion is confirmed by a resolution of the Sacred Congregation of the Council, published around the year 1600, and related by the esteemed author, in which the following question was proposed: "If, when a benefice becomes vacant, there are more than one opponent present in the competition, within the deadline set in the edict, and if, after that deadline has passed, another appears, should he be admitted, considering the matter to be complete?" The Sacred Congregation decided: "It is certainly to be admitted, since the matter is complete." And the same was decided in the Archpresbytery of Lanciano, on September 19, 1761, and in the Parish of Meleviana, on September 15, 1764. These decisions are in agreement with the rulings of the Sacred Rota in the case of Calagurita, concerning a half-benefice, on April 22, 1602, before Ortembergo, and in the case of Valencia, concerning a benefice, on June 27, 1607, before Penna. Furthermore, it must be noted that in the very edict of the Curia, it is stated that those who, due to a legitimate impediment, were unable to appear within the prescribed time, shall be admitted: "After the deadline has passed, unless a legitimate impediment is demonstrated, no one, other than those already registered, will be admitted." It is easily demonstrated that Anthony was unable to transmit his petition beforehand for a just cause. For, since the edict concerning the competition was not widely publicized in the diocese of Theramen, he testifies that he only learned of it on the evening of August 31st, and that he immediately sent his petition to the Bishop the following morning, which the Bishop received on September 2nd, unless a longer time had passed than that required by the ordinary before it was

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presented to him. Therefore, since, according to rule 60, section 6, he who can defend himself with a legitimate exception is not in default, and since the orator's legitimate impediment is undoubtedly proven, it necessarily follows from the aforementioned decisions that he should not have been excluded from the competition, and therefore the collation to the parish is vitiated by nullity.

[*Latin ed. p. 593*]

RIPANA 593 This is all the more evident when one considers that no one has presented themselves to accept the risk. Indeed, if no one appears who wishes to be inscribed on the list, or if no one is present who desires to undergo the examination, the Bishop cannot immediately confer the benefice, but must assign another time, or promulgate another edict; and if still no one appears, or if no one is found to be suitable, then only can the benefice be conferred without a competition: Ferraris, *Bibliotheca Canonica*, vol. 5, canon 1, article 2, number 22; G-arcias, *De Beneficiis*, page 9, chapter 2, number 218; Barbosa, *De Officio et Potestate Parochi*, page 1, chapter 2, number 51; Massobr., *In Praxi Canonica Requisita*, question 3, doubt 9. The opinion of the canonists is further confirmed by the following response from the Sacred Congregation, given to the Bishop of Vicenza on March 4, 1592, and reported by Prospero de Augustine in *Summa Bullarii*, under the words "collatio parochiali beneficiorum": "If a parish church is vacant, and within the term of the edict only one person appears, and he refuses to submit to the examination, nor does he wish to obtain the care of the parish, then the Most Reverend Fathers, who have been authorized by the authority of Our Holy Lord to interpret the decrees of the Council of Trent, have judged that another edict should be assigned, and that those who oppose should be called again." From this, it appears that the Bishop lacks the power to confer the parish without the indication of a new competition. It cannot be objected that the matter is left to the Bishop's judgment regarding those whom he considers unworthy to be excluded from the competition; and therefore, since, based on the information received, he considered him to be unworthy, he rejected his petition for that reason. For although such a right may not be denied to the Bishop, he is not to be excluded unless it is clearly evident that someone is unworthy and incapable: Garcias, *De Beneficiis*, part 9, chapter 2, number 391; Pignatelli, *Consultationes*, vol. 1, number 27; Rota, in *Caesaraugustana Canonicatus Poenitentiarii*, March 14, 1746, §. Confirmed before the Vice-Comte, January 20, 1747. However, Anthony does not seem to be such a person. Indeed, he himself states that since 1855 he has performed the office of preaching during Lent, and from 1860 to 1878 he served the parish of Aeta, Tom. XVII, fase. C C TV. 38.

[*Latin ed. p. 594*]

594 RIPAN A., having ruled in the diocese of Theramen, was subse-

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quently chosen to educate the clerics of the seminary of Penne. Indeed, when the Pro-Vicar General of Ripa inquired about the recurring character and conduct of the Vicars General of Theramen and Penne, they reported matters that seemed to be to his credit. Furthermore, it does not appear that the orator's legal arguments served the petition of the Municipality, whether when he accused the Bishop of failing to adhere to his purpose, or when he addressed the Sacred Congregation and, after the parish election, expressed his approval, stating that if this could not be maintained, he would exercise his right of presentation. For once he has decided to relinquish his right in this matter, so that the parish election may proceed, he can no longer have any part in this matter. Indeed, the rule of law is that once something has been decided and approved, it cannot subsequently be disapproved or rejected (Cap. Quod semel de Reg. Iur. in 6, Leg. Pomponius ff. de negoc. gest. Jason Cons. 231 num. 2, Menoch. Cons. 941 num. 2, Rota in Recent. Decis. 10 num. 10 p. 9). To this, other similar passages in 75 Iur. are also relevant. No one can change their mind to the detriment of another. Therefore, considering all of this, it appears that Anthony could not have been excluded from the process, either due to the passage of time or due to any unworthiness, and it naturally follows that the completed election should be upheld.

WHAT APPEARS TO BE FAVORABLE TO THE BISHOP. However, on the contrary, more arguments suggest that the orator's appeal should not be accepted, and therefore the parish collation should remain in effect. Indeed, Benedict XIV, in his well-known constitution "Cum illud," number 16, § II, states: "Public notice of the competition is proclaimed by edict, to be held at a suitable time, as determined by the Bishop; and by the same edict, all are clearly and openly warned to present, within the designatied period... documents of their qualifications, merits..." Otherwise, after the expiration of the said period, no documents of any kind, whatever they may be, will be accepted." However, the actor's petition, after the prescribed...

[*Latin ed. p. 595*]

In RIPANA, §95, if the Bishop has allowed the prescribed time to elapse, and no legitimate impediment has been mentioned, it appears that he has, in accordance with his right, excluded the candidate. Furthermore, even if it is conceded that Anthony was justly delayed, this does not necessarily benefit the claim to the asserted right. Indeed, it seems that such an exclusion does not at all violate the conciliar regulations. Moreover, the Council of Tridentina stipulated that all those described should be examined. These words presuppose that a description has already been made, and therefore leave the case entirely open when someone has not been described. Otherwise, it belongs to the Bishop, as is evident from the clear words of the same Council, to name those clerics who are worthy and suitable to govern the Church; and to receive their names so that, afterwards, a diligent inquiry

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may be made by examiners into their merits and abilities, as noted by the Sacred Congregation in the Asculana Parochialis, November 24, 1781. With this foundation established, it follows that it is free for the Bishop to judge whom he considers fit and worthy. Therefore, if among those competing, Anthony is not considered worthy or suitable by the Bishop, he may be rejected, and he would not be able to appeal against such a rejection, as noted in a Tarentina Archipresbyteratus of December 7, 1720, and in the competitions of St. Marci and Bisiniani, June 22, 1850. Someone is considered unworthy if he leads an immoral life, or has been defamed, especially by a venereal crime; Reclusius de Concurs. p. 1 tit. 1 num. 20, Argirò Discept. 20 n. 11. With these points established, in the case of Anthony, serious objections are raised both concerning his depraved morals and concerning the kind of life that is entirely unbecoming of a priest. Indeed, it was reported by trustworthy witnesses that he had been expelled from a diocese, and prohibited from celebrating Mass in another, because of scandals he had caused while preaching during Lent in the Cathedral of that diocese. Therefore, since it is evident from these things that Anthony leads a way of life that is entirely unbecoming of a minister of Christ, he appears to be justly excluded from the competition.

[*Latin ed. p. 596*]

596 RIPANA. It must also be remembered that the Bishop informed him on September 5th that he could not accept his petition. However, he did not bring the matter before the Sacred Congregation until after a month had passed. Furthermore, although an appeal could, in principle, be admitted in this matter, it should have been presented within the time limit established for appeals against the unfavorable opinion of examiners, or against an unreasonable judgment of the Bishop, which extends to only ten days, as established by the Sacred Office on November 16, 1720, when considering the circumstances. Therefore, if Anthony had any right to claim, he completely lost it due to the intervening delay. To the objection that the Bishop should have ordered a new competition, it can be replied that neither the Council of Trent nor Pope Benedict XIV in the aforementioned Constitution prescribed this in any way; therefore, the opinion of a few doctors, and the decision of the Sacred Congregation issued in a particular case, seem to have very little weight, so as not to be able to invalidate a completed election. Finally, it should be noted that Vagnoni also, it is said, obtained the favor of regium, and that the municipal authorities urged the Sacred Congregation to confirm his election. With these considerations, the doubt to be resolved is: Whether the collation of a parish by the Bishop is valid in this case.

RESOLUTION. The Sacred Congregation, having considered the matter, on March 7, 1885, decided to respond: "Affirmatively, and moreover."

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FROM WHICH THE FOLLOWING ARE GATHERED:

I. Since it pertains to the Bishop to nominate clerics who are worthy and suitable to govern a Church, it does not seem to the law to deny the Bishops the faculty of rejecting someone who has applied to be among the competitors, if the Bishop considers him neither worthy nor suitable.

II. He who leads a dishonorable life, or who has been defamed by a crime of a venereal nature, is most certainly considered unworthy to govern a parish, because his ministry is devalued among the faithful.

[*Latin ed. p. 597*]

MÜNSTER. 597 III. Ex [the decrees of] Trent, all those who are inscribed in the list of candidates must be examined, and those who have presented documents demonstrating their qualities and merits, at the appropriate time; and therefore, the exclusion of others, whom the law has omitted, does not constitute a contempt for the conciliar form. IV. An appeal from a bad report of the examiners, and from an unreasonable judgment of the Bishop, may only be made within ten days. V. However, if an appeal has been made after the lapse of one month, because of a reason which, although considered legitimate, has been presented in such a way as to suggest that the appellant could have been rejected from the list of candidates by the Bishop himself before the danger of the election.

MÜNSTER. REGARDING THE INTERPRETATION OF INTENTIONS. March 7, 1884. By summary proceedings.

SUMMARY OF THE CASE. Canon Gherardus de Millingen, in his will of the year 1439, established a perpetual vicariate in the town of St. Martin, stipulating that the vicarius for the time being should say three Masses each week, reserving the right of patronage for his descendants. However, the Ordinary, canonically erecting this benefice, imposed upon the perpetual vicarius the obligation of saying three Masses each week, believing this to be the founder's intention. Nevertheless, the actual vicarius, descended from the founder's lineage, applied only one Mass each week, since he possessed the benefice; nor did he consent to the declaration of the vicarius general of Münster, who recently admonished him regarding the obligation of saying the other two Masses, and of compensating for the omissions of the past. Wherefore, the Bishop of the Holy Roman Church has intervened, demanding that the number of Masses to be celebrated be declared, and also,

[*Latin ed. p. 598*]

598. MONASTERIES. If the obligation of three Masses arises, the Vicar should be assisted, and to him should be granted, with kindness, remission for those already passed. Concerning the Syiioptic Disputation. THREE MASSES ARE TO BE APPLIED. Furthermore, it is placed beyond all doubt

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that the conditions established in the foundation document, with the consent of the Ordinary, must be religiously observed, even if they are contrary to the law; *De Luca de iurep. disc. 67, no. 9 and 10, and S. Rota apud Marcian, decision 48, no. 12, and decision 49, no. 2*. Indeed, from the letters of erection, cited above, it is clearly established that the Vicar is permanently bound to apply three Masses within the week, on specific days and hours, as determined by the Dean and Chapter. If it is specifically stated that only one of these is to be applied for the benefit of his own soul and that of his relatives, it does not follow that the other two Masses are not to be celebrated according to the general intention of the founder, even if the purpose of these is not expressly stated. All the more so, if there is any obscurity in the aforementioned words, it cannot harm the intention of the testator and the pious cause, to which the favor of the law lends its aid. For although the favor of the pious cause does not compensate for a lack of will, it is nevertheless to be considered in order to provide a more benign interpretation in a case that is merely ambiguous, as de Luca notes in *de fid. disc. 107, no. 14*. However, in the case of the omission of Masses in the past, provided that these were to be celebrated according to the will of the testator, it seems that compensation is due. Otherwise, there would be a matter of conscience, and of strict law, which could indeed lead to the detriment of the souls of the founder's family suffering in Purgatory. Nor does it seem that the Vicar can defend himself with a claim of good faith, since this omission should have been avoided entirely after a warning from the Ordinary. ONE MASS IS TO BE APPLIED. On the other hand, the Vicar observes that the foundation documents prescribe the application of only one Mass, while saying nothing about the other two.

[*Latin ed. p. 599*]

MÜNSTER. 599 Unless the day and hour of celebration are specified, the application [of the Mass] is not. Therefore, it can reasonably be argued that if the founder had wished that the other two Masses be applied to a specific intention, he would have explicitly stated so. This is supported by the well-known saying: "The testator expresses what he wants, and does not express what he does not want." This is based on the assumption, and the probable intention, that the testator had in the founding of the Vicariate, namely, as the current holder of the benefice states, to increase the divine worship and to provide a devout people with the opportunity to hear the Holy Sacrifice more easily at a time when priests rarely celebrated Mass. If any doubt remains in the interpretation of the words, it should not be to the detriment of the beneficiary, who invokes the well-known Rule XV of the Civil Law: "Restrictions are to be interpreted narrowly, and favors are to be interpreted broadly." Nor can the obligation be urged forward on the grounds that it is for a pious cause. It is a very common principle in law that a lack of will cannot be supplemented by a pious cause; *De

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Luca de Test. disc. 8 num. 6, disc. 4 num. 12 De Legat. disc. 32 num. 5 et 9*. Furthermore, the current Vicarius states that the deceased parish priest, who entrusted him with the possession of the benefice, declared to him that only one Mass was to be applied each week, while the others were to be of free intention. In addition, the Vicarius General of MÜNSTER at that time, as well as the predecessor of the current beneficiary, used to apply only one Mass per week. From all of this, it seems that a certain custom has arisen, which, although it would have the interpretative force of law, could be safely maintained in the present case. However, although the application of three Masses was clear, the Vicarius believes that he is not at all obliged to compensate for the past. He had omitted them in good faith, and in the meantime had received and consumed the fruits of the benefice without becoming richer. Therefore, he is not obliged to make restitution, according to L. 25 *Sed et ff. de haer ed.* and L. 20 *ff. eiusd. tit.*. This concerns a benefice whose annual fruits amount to *summa*.

[*Latin ed. p. 600*]

600. MONASTERIES. 990 Roman soldiers, or 247 Roman cohorts, do not exceed this number, and he himself says that these, in the aforementioned town, are by no means sufficient for the honest sustenance of a priest. Furthermore, it must also be understood that a benefice exists from the founder's lineage, and therefore, leniency should be granted to him regarding the strictness of the law. Especially since the Ordinary himself strongly recommends him, and believes that [the expenses] should be compensated from the Church's treasury, or at the very least, reduced to a large extent. With these considerations in mind, the question was posed: what should be the response?

RESOLUTION. After careful deliberation, the Sacred Congregation [for Religious] on February 7, 1885, decided to respond: The vicar is not obligated to offer more than one Mass.

FROM WHICH THE FOLLOWING MAY BE GLEANED:

I. In interpreting the will, it is necessary to retain that which appears most likely and most in accordance with the mind and purpose that the testator seems to have had in view when establishing the pious bequest.

II. In speaking regularly, it can be maintained that the pious testator intended the application of Masses when the celebration of those same Masses was imposed as an obligation by the benefice.

III. However, in the matter at hand, it appears that the testator's intention was that only one Mass be offered; for which he used precise words; while his true purpose in the celebration of other Masses was to promote divine worship, so that the faithful might more easily hear the sacred rites, and to provide for priests who rarely celebrated Mass.

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(1) *Ecclesia Vol. VIII, page 661.*

[*Latin ed. p. 601*]

601 FROM 5. CONGREGATION OF THE HOLY ROMAN INQUISITION: Doubts concerning a Confessor and a Physician who would assist at a duel. To the Most Illustrious and Reverend Lord, Letters were sent on the 24th of September of the preceding year, in which the General Vicar of Your Eminence proposed the following three doubts: 1. Can a physician, requested by those about to duel, assist at the duel with the intention of bringing the fight to a quicker end, or simply to bind and treat wounds, without incurring excommunication simply reserved to the Supreme Pontiff? 2. Can he, at the very least, remain present at the duel, in a nearby house or in a close location, ready to provide his assistance, should those dueling require it? 3. What about a confessor, under the same conditions? The Most Holy Fathers, together with the General Inquisitors, reviewed these doubts for examination in a General Congregation held on the fourth day of May, the 28th, and, after mature deliberation, they judged that the following should be answered: To the first question: No, and excommunication is incurred. To the second and third questions: To the extent that it is stated, also no, and excommunication is incurred. While I communicate this to you, so that it may be noted as appropriate, I pray to the Lord for all good and happy things for you. Your Most Reverend Father, the Bishop of Pictavien. Rome, 31st of May, 1884. Most devoted in the Lord, R. CARD. MONACO.

[*Latin ed. p. 602*]

602 FROM THE DECREE OF THE SACRED CONGREGATION FOR INDULGENCES, by which an indulgence of two hundred days is granted to those who recite the following prayer to St. Thomas.

MOST HOLY FATHER, John Mary Andrew Vidal, professor in the Seminary of Nanuet, in Gaul, humbly prostrates himself before Your Holiness and begs that Your Holiness would deign to grant some indulgence to the Christian faithful who recite the following prayer to St. Thomas, Patron of all Catholic Schools, Angelic Doctor, holy Thomas, prince of theologians and standard of philosophers, illustrious ornament of the Christian world and light of the Church, heavenly patron of all Catholic schools; who learned wisdom without artifice and communicated it without envy, we beseech the very Wisdom, the Son of God, for us, that, as the spirit of wisdom, which you taught, may shine upon our understanding, and that we may complete what you did through imitation; that we may become partakers of the doctrine and virtue, by which you always shone forth on earth, like the sun; and that, finally, we may enjoy the sweetest fruits of them with you eternally in heaven, praising the Divine Wisdom through all the ages of ages. Amen. May God, etc. The Most Holy Lord Pope Leo XIII,

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has benignly granted an indulgence of two hundred days, to be gained once a day, to all Christian faithful, of both sexes, who, at least with a contrite heart and with devotion, recite the aforementioned prayer. This present decree is valid forever. Contrary decrees are to be considered null. Given, etc. July 3, 1885. L. B. CARDINAL FRANZELIN, Prefect. FRANCIS DELLA VOLPE, Secretary.

[*Latin ed. p. 603*]

603 SUMMARY OF THE ACTIONS CONTAINED IN THIS VOLUME XVII: LETTERS FROM THE ROMAN PONTIFF. The Encyclical Letter of the Most Holy Father Leo XIII, by which he commands that the Holy Rosary be recited in all ecclesiastical churches during the month of October of this year. Letters of the Most Holy Father Leo XIII, to the Archbishop of Florence, in which the erroneous opinions of two pamphlets are again condemned, which are entitled "La nuova Italia" and "Il Vaticano regio." Letters of the Most Holy Father Leo XIII, to the Secretary of State, concerning the establishment of a hospital for laborers afflicted with the disease of cholera, page 161. APOSTOLIC LETTERS FROM THE VATICAN PRESS: Apostolic Letters of the Most Holy Father Leo XIII concerning the establishment of the Urban College in the United States of America, page 175. Apostolic Letters of the Most Holy Father Leo XIII concerning the restoration of the Archbishopric of Carthage, page 209. Letters of the Most Holy Father Leo XIII to the Papal Nuncio in Paris, concerning certain pernicious principles published in the periodical "Siglo Futuro." Letter from the Most Reverend Cardinal Jacobini, Prefect of the Congregation for Affairs of the Holy See, to the Most Reverend Apostolic Nuncio residing in Madrid, regarding certain pernicious principles published in the periodical "Siglo Futuro," page 561. FROM THE CONSISTORY ACTS: Letters of the Most Holy Father Leo XIII; Address of the Most Holy Father Leo XIII, given in the Consistory on November 10, 1884, in which he created Cardinals and appointed many as administrators apostolic to various episcopal sees, pages 216, 260.

[*Latin ed. p. 604*]

-604 SUMMA Concerning a Consistory held on March 27, 1885, page 419. ACTS. Concerning the Amalphitan emphyteusis; it is doubted whether a house can be granted in emphyteusis, which is said to have been built by St. Francis of Assisi.

FROM THE HOLY CONGREGATION OF THE COUNCIL.

Marriage: The man's impotence is not sufficiently proven, page 82.

Papal jurisdiction concerning baptism; since the Chapter enjoys the privilege of baptizing children from Thursday in the Lord's house until the

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octave of Easter, the question was raised whether children born before this time, and not baptized within this time, should be baptized by the Chapter.

Andrian. Funerals and emoluments; it is decided that the designation of the hour pertains to the parish.

Concerning the exemption of the Chapter from St. Charles Borromeo.

Panormitan. Concerning parochial rights; in order to quell dissensions among the clergy of the Church.

Ariminen. Concerning tithes; it is not permitted to collect new tithes from a parish united to a rectory, even if, by papal grant, tithes had been collected in some parishes.

Lavallen. Concerning the erection of a filial church; it is decided that a filial church can be erected, even if it had previously been collected tithes in some parishes.

Lucana. Concerning the benefit of parochial rights; it is decided that the procession, which was intended to open the parochial school, pertains to the two sodalities, even though one of them was later incapacitated by a cerebral condition.

Taurinen. Concerning the faculty of advocacy; it is recommended to an elderly presbyter that he pursue the advocate, so that he may obtain a just and honorable means of support, until otherwise arranged.

Castrimaris. Concerning the restitution in full and the right of patronage; the question was raised whether the right of patronage over the parish is hereditary.

Avenion. and Valentinen. Concerning the transfer of pensions. The Bishop of Valence asks whether the pension for the free boarding of young people, from the seminary of Avignon, can be transferred to his own seminary, which now enjoys the recognition of the government.

Gratianopolitan. Concerning the faculty of celebrating Mass.

It is confirmed that the faculty of celebrating Mass can be granted.

[*Latin ed. p. 605*]

SUMMA ACTORUM 605 p. 139 concerning the granting of the Laureate degree, regarding the first dignity of Collegiate Canons. p. 205 Concerning Decimals; it is resolved that the Legion, pertaining to residence, is not due; the Parish Priest is not to be compelled to pay a fourth of the decimate, which is a special portion due to the Parish Priest, who, through consistent arguments, does not collect these from the parish, but is to retain a certain annual sum for the Episcopal Table, to be given to the Parish Priest on the feast of Saint Nicholas, November 2nd; the Parish Priest, who had doubted whether he should do this by a legitimate indult, [is instructed]. . . . . » 140 Concerning Tulancingo, regarding the faculty of binating; the Bishop demands the measure of the fruits [of the benefice]. » 243 Concerning Tivoli, regarding Matrimony; the sentence of the Curia is confirmed, which, based

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on certain reasons and fears regarding the nullity of the marriage, had designated two presbyters who were able to celebrate marriages on certain days for the benefit of the people. » 157 Concerning Papia, regarding irregularities; an indulgence is granted to a cleric, afflicted with a contagious disease, who is subject to the filial [obligation], so that either of them may be promoted to the sacred orders. » 271 Concerning Sypontina, regarding the boundaries of parishes; the Church of Saint Joseph. » 280-160 Regarding doubts concerning the authority of the Ordinary, regarding impediments to marriage; concerning priests who abandon [their posts], to the detriment of the Bishop, or who refuse to accept [a benefice]; the decree of the Curia is confirmed, which declared that there is an impediment of the first degree concerning the month, concerning consanguinity between spouses, who, having entered into a civil contract, requested marriage from the Church; it is declared that the marriage is null, because of clandestine circumstances, and because of the lack of consent; because the procurator, when he gave consent, did not act in the name of the mandant, but as a notary, lacking legitimate reasons. » 288 Concerning Naples, regarding Matrimony: no impediment of the first degree is declared; the marriage is null because of clandestine circumstances, and because of the lack of consent. » 178 Concerning Warsaw, regarding separation [from marriage]: denied, lacking legitimate reasons and proper proof. » 187 Concerning Aretina, regarding the renunciation of a parish: [the renunciation] is accepted of his own accord. » 305 Concerning Caputaquen-Vallen, regarding endowments; it is declared that the Bishop must pay annual endowments to two parish priests for a suitable pension, as is done with parish priests who have suffered a just and legitimate diminution of the revenues of the Episcopal Table. » 196 Concerning Zamora, regarding dispensations concerning defects; Concerning Praenestina, although [a dispensation is granted] concerning defects of birth; an indulgence is granted to a cleric who was born from an adulterous and incestuous union. » 313 Concerning Matrimony; no marriage is declared null which remained unconsummated after a long period of cohabitation, because of the impotence of the husband. » 322 » 203 Concerning Bologna, regarding voluntary commutation [of vows]; a request is made concerning the burdensome duty [imposed on] a woman who has professed vows of a third Order.

[*Latin ed. p. 606*]

606 Regarding the actions of the Most Reverend Father Francis, it is denied that he abandoned the cause; preference is given to following the endowment, which must be given to the poor of the parish, either to young women or those entering marriage, through the distribution of the fruits of a pious endowment, or by making vows for the benefit of the poor of the parish, with precedence given to relatives if they are present.

p. 448 A dispensation regarding a marriage already celebrated by the

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Pious Endowment of Feretrana in Vienna. A doubt arises concerning the suspension of the marriage; it is resolved that the decree of suspension should not be maintained, provided that a demonstrative or specific sum has been designated annually for the satisfaction of the Mass.

p. 470 Regarding Forosempronien. The denial of a voluntary derogation; it is denied to a widow to transfer to others the use of her husband's goods, which had been granted to her by this law, so that she would not be transferred to other vows granted by the Bishop.

p. 377 Regarding Verulana. A doubt concerning filiation; it is resolved that the legitimate filiation of a child, born of just marriages, but baptized by the mother in the manner of illegitimate children, while the father's name is omitted, is established.

p. 478 Regarding Civitatis Castelli. Concerning funeral rites; a dispute arises between the parish priest of the Cathedral and the chaplain of the hospital as to which of them is entitled to perform the funeral for a noble woman who died in the hospital.

p. 482 Regarding Vercellen. The denial of a legitimization of offspring born in concubinage; a certain Sardinian requests a legitimization of offspring; the Ordinary prohibits the reduction of the pension.

p. 490 Regarding Florentina. A request for a reduction of the canon; it is denied that the canon be reduced to a certain sum, since it appears to be a heavy burden on the revenues of the parish.

p. 430 Regarding Mantisalti. Regarding the removal of a seal or the opening of a mouth; the question is whether a seal should be removed, having been provoked before the Apostolic Datary concerning the provision of a Coadjutor.

p. 501 Regarding Florentina. A dispensation from irregularity; the dispensation requested is remitted to the judgment and conscience of the Ordinary.

p. 508 Regarding Mohilovien. Nullity of marriage; a lawsuit against a priest who is accused of being a centurion.

p. 439 Regarding Guastallen. Regarding the interpretation of the will; a parish priest inquired whether relatives of the testator, who are members of the parish, are to be considered.

p. 516 Regarding Regien. Regarding patronage; among several individuals claiming active and passive rights.

[*Latin ed. p. 607*]

SUMMA ACTORUM 607: It is inquired to whom the institution of a cleric into a benefice should be conferred, page 526; concerning insignia of foreign honors, page 554; Ortona: concerning the erection of a priory; Sarzana: concerning an election; the matter is whether the canonical Francisco Bonanni should be granted the grace to have his canonical status

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elevated to the dignity of a prior, so that the sentence of the episcopal curia, which declared that no election had been made by the heads of families, should be confirmed or infirm. » 533

Tarragona and Oxford: concerning ordinations or excardinations and dispensations from irregularity; the matter is declared settled, and a new proceeding is ordered. » 570

Meleto: nothing transpires; the sentence of the episcopal curia is confirmed, which did not admit the requested grace of receiving orders from a foreign bishop, denying the proper bishop to grant letters of dispensation; nothing transpires concerning the arrangement made by parents in the marriage of a son. » 585

Nullius: concerning the concursus of Montecassino and Ripana; a priest is repelled from the concursus, whose petition for admission reached the bishop after the lapse of the time prescribed in the edict, without, however, any fault on the part of the bishop. » 590 » 538

Monastery: concerning the interpretation of a will; the Tridentine font of baptism; the matter is concerning the granting or denial of the faculty of erecting a baptismal font in a church, to which the people of another church, having a baptismal font, have access. » 543 » 597

From the SACRED CONGREGATION OF BISHOPS AND REGULAR CANONS:

Arian: concerning the sacred confessions of canons; the indulgence for maintaining the choir is explained; it is declared that the right which the Chapter, observing all things, is accustomed to grant to canons to hear confessions, extends to all things, and that the Chapter has the right to receive distributions in the church of the PP. Observant. » 549

Rome: concerning the emancipation and the Capellania of Fundi; various matters are proposed for resolving doubts concerning the burdens of the Capellania, the vineyard, which the founder of the benefice distributed, which he says the civil government did not understand, and concerning the perpetual reversibility of the dowry to the patron's patrimony. » 552

Letters by which bishops are forbidden...

[*Latin ed. p. 608*]

608 Several doubts concerning the authority of Bishops over religious women, subject to enclosure. The matter of salaries in Praenestina; the actions of AGTORUM are indicated on pages 583 and 255. A benefice, by order of the Sacred Congregation of the Holy Roman Inquisition, is to be restored to two acolytes who had served in its place. Concerning the Sect of the Freemasons: Instruction » 289 of the Roman and Universal Inquisition, concerning restitution; it is resolved that a new audience shall not

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be granted to a priest who has appealed, after the lapse of ten days, to the Bishops » 48. A doubt regarding the promulgation of decrees, as if they were creations » 291. Concerning missions and newly created parishes in Americae » 351. Concerning Alatrina, or the Order of the Carthusians, regarding the validity of religious profession and filial devotion; a doubt regarding minor excommunication, regarding those who absolve a complicity, and regarding craniotomy. The validity of affiliation and profession of a religious, who, having heard a case, had emitted vows in another Convent » 555. A doubt regarding a surgical operation, namely a craniotomy, performed without the dispensation of the Father General, at Mechlinien, or the Monastery of the Cellite Fathers » 556. A doubt regarding the nature of the vows; it is discussed whether, and how, and for which houses, the Cellite brothers are bound by solemn vows » 387. From the SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH: Concerning Venice, regarding the validity of a compromise and an election; regarding patronage; it is asked whether, in the collation of a benefice, the canonical computation should be followed, in the election of a Prefect of the Congregation, of the Most Reverend Philippi » 451. Concerning Catacen, regarding the validity of a permutation and provision; it is affirmed that what prevails in ecclesiastical matters is superior to what prevails in civil inheritance » 226. Regarding patronage; the question is whether, if priests are lacking from the family of the founder, the benefice can freely be conferred by the Ordinary. Concerning Venice, regarding a parish; it is affirmed that the election of a parish priest by heads of families, or rather, by descendants of a sister of the founder, is invalid » 23k. A Rescript; whereby all...

[*Latin ed. p. 609*]

A summary concerning letters pertaining to sodalities or scapular unions of any kind, which, due to some defect, are invalid; after reciting the attached prayer for the conversion of the people of Scandinavia for three hundred days, they are, with benignity, made valid, page 242. A decree by which permission is granted to recite the attached prayer for two hundred days. Circular letters from the Most Eminent Cardinal Prefect to Bishops and Vicars Apostolic concerning immovable property of the Holy Congregation... 602 of the same, concerning heterodox Universities. 557 From the Holy Congregation for Indulgences: A decree by which the sentence of the Archbishop concerning the identity of the bodies of the greater Apostle St. James and of the disciples Athanasius and Theodorus is confirmed. 93 A decree declaring whether or not an Indulgence of dubious benefit can be granted more than once in a day concerning the recitation of the Stations of the Cross after Mass, without singing. 47 A decree confirming all stations of the Stations of the Cross, hitherto invalidly erected, in Florence. 47 Doubts concerning Papal Benediction. 302 A decree by which certain indulgences with attached prayers are granted. 352 A

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decree by which it is permitted to gain indulgences to the Order of the Servants of the Blessed Virgin Mary. 96 Doubts concerning votive offices. 301 A prescription concerning sacred music. 340 Indulgences, attached to the Stations of the Cross, are granted to those who are legitimately impeded, and who do not have a crucifix to use for this blessing, that they may perform the Stations of the Cross with a person who holds a crucifix. 401 Doubts. 350 A decree concerning the confirmation of the cult, which has been practiced from time immemorial, and concerning the venerable servant of God Eustathius, Bishop, who sanctified it, and concerning the canonization of the seven founders. 398 From the Congregation of the Holy Mother of God: A decree concerning various doubts concerning the Rosary, etc., Volume XVII, page 398. A decree concerning the canonization and beatification of the venerable servant of God Caietan Errico, of the Holy Hearts Congregation, now called Neapolitan. 399

[*Latin ed. p. 610*]

610 In Rome, or Milan, from the venerable servant of God Glycerius Landrian, of the Congregation of Regular Canons of the Mother of God, of the Piar Schools, Milan. Concerning the beatification, etc., of the venerable servant of God Anthony Mary Zaccaria, founder of the Congregation of Regular Clerics of Saint Paul, the Barnabites. » 560 ACTS: A book condemned by the Holy Congregation of the Inquisition . . . . . page 48. Decree by which a work is prohibited, entitled "La scomunica di un' idea." » 256 Decree by which various books are prohibited. » 304 Decree prohibiting two books. » 464 FROM THE PRESS OF THE VICARIATE: From the Holy Congregation of the Index. Notification from the Eminent Cardinal Vicar. Decree by which the book C. concerning the Congregation which calls itself "of Saint Paul" is included in the Index of prohibited books. » 164.

[*Latin ed. p. 611*]

611 GENERAL INDEX OF CONCLUSIONS NOTED IN MOST OF THE ACTS CONTAINED IN THIS VOLUME, THE SUBJECT MATTER OF WHICH IS FULLY EXPLAINED OR STATED IN THE INDIVIDUAL ACTS. These conclusions are included under the following words:

Religious Affiliation
Emphyteusis
Patrimony
Opening of the Mouth
Baptismal Font
Obligations
Judgement
Parish Priest with regard to Residence
Parochial Rights

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Pension
Concurrence
Jurisdiction of Bishops
Exchange of Parishes
Confraternity
Patronage with regard to succession
Cleric with regard to cohabitation with women
Tithes
Religious Profession
Renunciation of Benefice
Church located in a boundary
Pious Legacy
Restitution in full
Election
Legitimation
Sentence

Religious Affiliation is rightly denied, not after the prior theft or subreption has been removed, as the common interests of the litigants require; namely, that permission be granted in due time, and that access to the Superior be precluded to those, who are unjustly accused, page 448.

Cleric, pontifical, with regard to cohabitation with women, on December 9, 1859, those who have made a simple vow may lawfully and freely make a solemn profession in the convent or house in which they are found, ibid.

By law, it is forbidden for clerics with solemn vows to cohabit with women, of whom any suspicion exists, or to form any custom or familiarity with them, so that those who act in this way are considered as concubinaries, even if they do not admit to receiving any payment, page 500.

In Rome, those who commit such grave offenses can be punished by the Bishops by being prohibited from the sacred ministrations, if they do not have pensions or ecclesiastical benefices, ibid.

It is necessary that the decrees of the Pontiff be obtained, so that it may be demonstrated that the same decrees have been removed due to the most heinous theft or subreption, page 447.

[*Latin ed. p. 612*]

612 GENERAL INDEX. However, the fault of contumacy ought to be joined to the name of clerics who are worthy and ought to be: for, for the sole crime of not being suitable for governing any Church, they are not to be excommunicated, but are to be punished for contumacy; and, from such a crime, it does not seem to the law to be permissible to reject a petitioner

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among those who are present, if he is rejected by the Bishop and is not deemed worthy, nor suitable.

Regarding this matter, when contumacy ceases, the punishment inflicted for it should also be remitted, and absolution should also be granted from medicinal censures, and the restoration of the person to his former state should be made.

From the warning of the Holy General, Ep. and Reg.

From the Council of Trent, all ought to be examined who are in the list of those present, even if they are not from the same diocese, even if they are not enrolled there; those who have been described, and who, at the opportune time, have exhibited documents contrary to the established practice, are to be excluded, so that the exclusion of others, whom the law has omitted, does not involve contempt for the canonical foundation.

The conciliar list of those present, page 597.

Appeal from bad reports and from unreasonable jurisdiction of the Bishop extends only for ten days.

It is entirely fitting that in parish churches, confraternities be established, which, by a proper and salutary means, lead the flock of the faithful to the pastures of salvation.

Therefore, by common law, the privilege of parishes to carry only certain things is not permitted to be extended to some from any city or district, excluding others, unless it expressly appears that it originates from pontifical authority, to which alone such a privilege belongs; then, those who have previously used the pallium in processions, both public and private, ought to have precedence.

If it has not been duly proven that one of the contending confraternities derives its favor from pontifical authority, then those who have previously used the pallium in processions, both public and private, ought to have precedence.

[*Latin ed. p. 613*]

INDEX GENERALIS

Members of the Most Holy Sacrament enjoy 613 new tithes, which, according to the opinion of certain doctors, are entirely excluded from other sodalities; and in a special manner, and in processions in which the Most Holy Sacrament is carried, they have precedence over other sodalities, even those of older foundation, ibid. Parishes retain these rights, ibid. A centennial and memorable possession affords the Bishop the best support, title, and right, so that without any proof of this title, he can collect tithes; the Ordinary can do this, ibid. It is clear that both ancient and new tithes are due to the parishes, all rights demanding it; a church situated on the border

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belongs to that parish, so that it has a founded intention in law for its own benefit.

It is a principle of law that any house, or even a church, monastery, or chapter, situated on the border, belongs to that parish, page 38. From this it follows that in a dispute regarding the collection of tithes, the burden of proof rests not on the parish, but on those who are paying tithes to him. ibid. For privileges, since they are odious, are judged according to the territory in which the entrance is found, according to the saying: "Where the entrance is open, so is the house and the parish judged," ibid. There, the parishioner is where the main gate is. Where there is a gate, there is a house, page 287. Since these privileges yield to the prejudice of those for whom the right belongs, they cannot extend, but rather must be restricted, ibid. The possessor is not required to restore the fruits consumed before a contested lawsuit is concluded, if a greater effect has not been produced, p. 39, ibid. From this, good faith is demonstrated.

By law, it is certain that tithes of any kind are due to the parishes; hence, those who have a founded intention in law have a right against anyone; so that the burden of proof, in the matter of tithes, rests not on the parishes, but on others, page 250. Furthermore, if to anyone, by a pontifical indult, a privilege has been granted to collect tithes without any specific restriction, it is understood that the case omitted falls under the disposition of common law, page 456.

[*Latin ed. p. 614*]

614 GENERAL INDEX. It is certain that the rule of the Oratory of St. Philip has not, over time, subjected the fertile lands which it has contemplated to *emphyteusis* in Kosso, nor has the election of the Prefect ceased to be a matter of a single agreement; therefore, it is to be believed that a moderate canon would be established. For this reason, cases of this kind are subject to general law, or common law. *ibid.* The common law does not approve that the election be entrusted to a single person; but it seems to require the consent of all those involved, as in the case of absolute *compromissum*, in which the person freely chooses a suitable individual; and it requires the consent of the majority party, when the matter concerns a limited *compromissum*; namely, when a certain person must be chosen. *ibid.* In an absolute *compromissum*, the person freely exercises the rights which are actually perceived, as well as those which could be perceived, for the sake of better cultivation. *ibid.* The baptismal font is the source of all the elected; and therefore, the consent of all those involved is required, so that no one may seem to be deprived of his vote. The spirit of the sacred canons and the constant jurisprudence of the Church, for the benefit, or salvation of souls, therefore, it seems sufficient to have the consent of the majority of those elected. *ibid.* In a limited *compromissum*, when the person does not act freely, but must choose a certain person, in order to oppose the

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rights of a third party, and to counteract customary practices, the rights of the third party, and the customary practices, are completely set aside; so that whenever all these things hinder the spiritual good of the faithful, p. 549. With regard to this matter, the Apostolic See has repeatedly permitted *emphyteusis* over ecclesiastical property by canon law, if there are causes present, which are necessity, piety, and utility, p. 87. *Emphyteusis* is a contract whereby anciently, uncultivated lands were granted to someone with the obligation of paying a certain tribute in recognition of the lord's dominion, p. 508. It does not create an exclusive right for any church, even if strengthened by an ancient custom, to have the baptismal font, whenever the faithful suffer detriment from this right, *ibid.* The erection of a new baptismal font is permitted when there are just causes present, which can be reduced to one; namely, to...

[*Latin ed. p. 615*]

INDEX GENERALIS 615. A grave inconvenience may be caused to the parishioners by a decree issued, whether newly promulgated or for some other reason. Ibid. The baptismal font, ibid. Judgment. Parochial Rights. Since no one can be condemned unheard, therefore, acts issued without the citation of the parties are considered null by law, and the judgment is deemed void, page 287. The parish priest has a right founded in law regarding the funerals of his parishioners; thus, no corpse can be removed without the parish priest being present or duly notified, page 19. Therefore, even in a summary judgment, it is not permissible to shorten the proceedings in such a way that necessary evidence is not admitted, and legitimate defenses are not allowed; otherwise, the judgment is void, as if it were issued without knowledge of the case, ibid. Regarding parochial rights, the right to conduct a funeral and to remove corpses from a house, there appears to be no valuable reason by which it should be denied to the parish priests, even the right to set a time for the removal of corpses and for funerals. A judgment issued and published acquires the force of res judicata, if within a period of ten days, the one who can appeal does not appeal; otherwise, it appears that he has consented to the judgment, page 295. When a judgment does not fully resolve the matter, so that the entire case cannot be considered fully concluded, the res judicata only establishes a limit to the controversy, page 296. Hence, the question is extinguished by res judicata, unless it can be restored by restitution in integrum or by granting a new hearing, ibid. The Apostolic See, in its dispositions, follows a certain equity; and therefore, even if the ten-day period has expired, it often grants a new hearing, especially if the appellant's will to appeal is evident, and a new trial offers hope of modification, ibid. The ordinary ministers of baptism are the parish priests, both by common law and for the common good of the Catholic society; namely, so that the names of the children are recorded in the parish registers, and it is more easily known

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who has been born of just marriages, page 93. A contrary custom must either have a special apostolic indult or must have originated from time immemorial, in order that it may be considered a prescription, and be held as equivalent to new law, derogating from the old, ibid. In the matter of common law, it seems to have been derogated by the custom, by which it happens that the chaplain of the hospital cannot go out from the pious house to collect corpses, and that external parish priests cannot enter the city gates to collect the corpses even of their own parishioners, page 490.

[*Latin ed. p. 616*]

616 INDEX

Iurisdictio Episcoporum

GENERALIS: Opinio adhibenda quae propria illius fori est, cui materia perti; Episcopis data est ex iure duplex potestas, nempe potestas ordinaria et potestas delegata, qua utuntur in casibus extraordinariis et contra privilegium exemptionis possidentes, pag. 30. Exemptiones haud violantur per Episcopos utentes auctoritate delegata; nam hisce in casibus Antistites non agunt in exemptos nomine proprio, sed nomine Sedis apostolicae; quae Ordinariis eisdem delegai propriam auctoritatem, ut firmiori iure procedere valeant in exemptos, ibid.

In casu pro canonica computatione stetit et observantia : quae cum iuxta legem sit, maximum roborem habet.

Deficiente beneficii possessione in titulum institutionis, regula 36 Cancellariae haud est invocanda.

Fructuum perceptio in bona fide, ab eorumdem restitutione excusat usque ad diem motae litis.

Explorati iuris de triennali possessore est in actibus mere facultativis non inducitur praescriptionem, nisi constet, ipsos prohibitos fuisse et partem adversam acquievisse prohibitioni per tempus habile, ibid.

Ii qui ex femina descendunt, ad familiae matris domum haud pertin□□□: cum femina non propriae familiae tantum, ad praescribendum finis sit.

Episcopis ius est et onus incumbit agnato-rum collectionem, a qua cognati excluduntur, pag. 242. Verba domus vel familia desi-gnant plurium familiarum.

Apostolicis delegatis, quaecumque hospitalia et collegia invisendi, ac pro observantia voluntatis pii fundatoris invigiland; quamvis praedictorum locorum cura ad laicos pertineat, ibid.

Hinc si testator familiae nomen cura ad laicos pertineat, tantum in vacatione posuerit, nullo designato stipite, agnati exclusive ad cognatos in fideicommissis vocantur: eademque valet lex in iurepatronatus.

Iuspatronatus quoad successionem Civilis graduum propinquitatis com-

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putatio in successionibus haereditatis est servanda, pag. 234.

In materiis quae successiones haereditariae non sint, ea est com-gno in pretio habetur observantia uniuscuiusque casus propria, ibid.

Ex Pitonio de controv, patr. allegat. 9 num. 31 valida habetur nominatio tantum a nonnullis.

[*Latin ed. p. 617*]

INDEX (acts; while others, either by law were prevented, or neglected to name [beneficiaries]: because patrons, in the matter of presenting [beneficiaries], are considered as associates in a common affair, page 533. Those who enjoy the passive right are considered to be named by the very founder; so that, if they are neglected by the naming patron, they can, by their own right, oppose any nomination, ibid. Patrons who sell the right of patronage are subjected to the penalties of excommunication and interdict, according to the Council of Trent, Session 24, chapter 29, and are deprived of the very right of patronage; so that, if a hereditary patron exists alone, he is deprived of his right, and the church becomes free for appointment, ibid. Legacies: It is consonant with justice that the pious wishes of testators should be observed in every way; even if, at the very beginning of the foundation of some benefice, the testators themselves have attached conditions, contrary to common law, provided that they are honest and possible, page 138. It is a principle of law that the expressed will of the testators should yield to the presumed will; especially if arguments are brought forward that are known to the testators, and which they themselves have set aside, ibid. In V ER ALIS, Canon 7, it is presumed that the testator intended that the legacy should be fulfilled in such a way that it may be better and more abundantly accomplished, page 477. To determine whether a certain amount has been demonstrated, one must consider whether the testator began with an obligation and then indicated a way to fulfill it: in acting in this way, the testator intended to impose the obligation purely and simply on the heir, and only demonstrated the fund from which the heir could take money to satisfy the obligation, page 478. But if the testator begins by designating a fund, the revenues of which are to be used to fulfill the obligation, and then defines the obligation of Masses, then the designation of the fund appears to be made expressly; so that, if that fund is lost, or otherwise, with reduced revenues, or increased rates of stipends, the heir is not bound to provide a supplement, ibid. In the interpretation of a doubtful will, it must be retained that which is more likely, and more consonant with the mind and purpose that appears to have been before the testator's eyes, when he established a pious legacy, page 600. Regularly speaking, it can be maintained that the testator intended the application of Masses when he imposed the celebration of those Masses as an obligation on the benefice, ibid. Legitimation: To the extent that there is doubt whether the legacy left was demonstrative or

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expressly designated, it is to be considered, since in this case the favor of the pious cause is involved, and to each son it is impossible to prove with certainty and propriety [his inheritance] because of the hidden mysteries of nature.

[*Latin ed. p. 618*]

618 The index refers to the true and absolute proof of paternity, page 386. The law, in order to establish the status of children and to resolve countless disputes concerning paternity, supplements the proof of paternity that nature has concealed, by a presumption of law: because this is required for the tranquility of families, the sanctity of marriage, and the good of society. - Ibid. Therefore, since legitimate procreation cannot be directly proven, the law indirectly derives this demonstration and proof from marriage, establishing the legal principle, sanctioned in almost all nations, that the father is he whom marriage demonstrates; it must be believed that he who is born from a just marriage in the seventh month is a legitimate son. - Page 387. Therefore, it is sufficient to prove one's own birth, in order to demonstrate that the son, concerning whose legitimacy there is doubt, was born from a just marriage. - Ibid. When adultery is not clearly proven, the presumptions that exclude the crime are to be preferred, and those that appear more honorable, more in accordance with reason, more benevolent, and more favorable to the offspring. - Ibid. The utmost caution must be exercised by the ordinary judge, due to the difficulty of the matter, when dealing with the dissolution of marriage on the grounds of impotence, in order to avoid fraud and collusion between the spouses; for they often seek a solution to transition to other marriages. - Page 14. In this matter, there is no fault to be found with the judge in investigating the truth and seeking evidence regarding impotence; because the dissolution of marriage is a very serious matter, and the soul may be endangered, either by dissolving a valid marriage or by approving an invalid one. - Ibid. Regarding the value of marriage, according to the Doctors, a pronouncement must be made if a man who is dubiously impotent asserts that he has had perfect intercourse, and the woman denies it: provided, however, that there are no certain signs of impotence, but only doubtful and ambiguous ones. - Ibid. Natural impotence precedes marriage, while accidental impotence follows marriage; for natural impotence is presumed to have preceded, because a quality received from nature always remains; while accidental impotence is presumed to follow marriage; for nature produces the powerful, and he who asserts that someone is impotent has the burden of proving it legally. - Ibid. A woman who proclaims, late in the marriage, that she has not at all been with her husband, is to be listened to with the least consideration, even if she admits to an impediment, which the man denies. - Ibid. Nevertheless, the proof of nullity has great force, to the extent that the wife proves, by her appearance, that she has not been known by her husband,

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when this is affirmed by the matrons who observe them; then, rather, the wife's denial of intercourse is to be believed. - Ibid.

[*Latin ed. p. 619*]

INDEX 619 GENERALIS. Already, if it is affirmed by a man; and if it is established that another spouse, who is a virgin, has remained in a state of virginity after the marriage, this can be invoked even many years later. All are obligated by the holy Canons to reveal. Alice exhibits a legitimate cause for separation: adultery, duly proven; for the Lord permitted the husband to divorce his wife "for some wickedness," whenever adultery is committed, to the punishment of him who broke the marriage, and for the sake of him who kept the faith, so that he should not be bound to render that which is due to him who did not keep the faith. Marital causes are said to be popular, page 186. A rigorous and evident demonstration is not required to prove the existence of an impediment, when and if the acts are referred to; but if it concerns entering into marriage, there must truly be hatred between the spouses, such that there is no hope of reconciliation, lest the sanctity of the sacrament be harmed, as happens in a marriage already begun; and any proof, even a slight one, can suffice for this purpose, provided it was made through free love. From the Doctors, it cannot be deduced in any way that spouses, among whom the mother of the bride or groom has revealed the existence of consanguinity, especially if other aids to this revelation are added, can be joined together by the Church; therefore, such a sacrament should not be celebrated unless there is free consent. But free consent is lacking whenever fear or coercion intervenes: for true consent is absent where the greatest freedom is lacking. In the ecclesiastical forum, causes for separation are admitted only for the most serious reasons, and for all those prohibited: because nothing is more odious to the law, nor more harmful to individuals and to the commonwealth, than to dissolve a union of individuals, which divine and human reason have approved. To obtain a separation, reverence is due to him to whom it pertains, page 195. A clandestine marriage is properly called that which is contracted without the presence of a parish priest, or another priest of equal or higher standing who has the cause, or without the license of his or his Ordinary, or without two witnesses. Page 312. The proper parish priest, for a valid...

[*Latin ed. p. 620*]

620 INDEX: The one who has ordinary jurisdiction in the matter of marriage is he who, at the time of the celebration of the marriage, possesses it, whether by reason of the domicile of the contracting parties, or by reason of his residence, or by reason of his office, etc. The principal of these is the bond by which the contracting parties are joined.

To establish a legal domicile, it is required that there be a fact of habitation with the intention of permanently residing there; a quasi-domicile is

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required, so that the contracting party may have resided for at least one month in the place where the marriage is celebrated; thus, he becomes known to the inhabitants of that place and is considered as a citizen.

Therefore, those who depart from the place of their habitation, without the intention of abandoning it, but only to seek the assistance of a judge, are not thereby rendered incapable of contracting marriage in that place; and in the external forum, such a marriage is not declared invalid, but only requires the assistance of a judge, so that it may be lawfully celebrated.

The judge is not only required to examine whether there is a grave or slight fear, and whether violence and threats are present, but also the circumstances, the condition of the person, whether of the one who is feared or of the one who inspires fear; for example, if the son is of a gentle nature, timid and cowardly, and truly subject to the will of his parents, it cannot be said that he has entered into the marriage contract freely, even if he appears to have done so.

The Doctors teach that, in addition to the fear of reverence, imposed prayers can also inspire a fear that is sufficient to invalidate the marriage, for example, by saying, "I take you as my wife in the name of Titus."

A marriage, which, by reason of nature, is initiated, is perfected by the full consent of both parties, which must be free and not subject to any impediment that would invalidate the marriage, because this would notably diminish the freedom.

Impotence, which is immune from grave coercion and fear, must be perpetual, and must precede the marriage; otherwise, the marriage is not valid.

[*Latin ed. p. 621*]

INDEX (GENERALIS 621) whether it is absolute or relative, and whether it pertains to the essence of the matter or to an accidental circumstance; it has a presumption of law for itself, ibid. In a judicial process, two things must be proven to grant a dispensation: namely, that the marriage is valid and not consummated; and that just causes are present, page 367. It is presumed that no fear was present, or that it has been purged, when a person who was subject to the greatest fear did not attend the celebration of the marriage, unless it can be proven otherwise. The sworn testimony of witnesses, as well as the report of experts, friends, and relatives, are of the greatest importance in proving the lack of consummation of the marriage, ibid. Experts, however, are to be considered rather as in the place of judges than as witnesses, when the matter to be proven is one in which the judge is not instructed, nor is he accused; but they are not to be heard, unless their testimony is clear and conclusive, ibid. Not every fear renders a marriage invalid, but it is required that the fear fall upon the man who is about to marry; and that he have a reasonable fear; and therefore, the judge, according to their

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testimony, pronounces his judgment, ibid. When, in judgments concerning the most serious matters, the practice received by canonists is that judges pronounce sentence in a larger number, as is commonly the case, the same rule seems to be to be observed regarding expert witnesses, who are to be considered as judges in their own art, ibid. According to both civil laws, a woman who goes over to another religious order loses whatever has been left to her; because, in doing so, she obliterates the memory of that which she had vowed, and she spurns her former will, page 481. Hence, according to ancient civil law, a mother who enters into new marriage is deprived of the care of the children of her former marriage, and is excluded from their care; for a grave presumption arises that she will neglect those children and expend their goods on the children of her second marriage, ibid. Marriage, according to the form, must be free from the penalty of damage, not from the penalty of loss; so that those who say that they contracted marriage out of fear of losing something are validly married, ibid. It is most fitting to equity and natural law to preserve words and promises, or those things which have pleased the parties, page 64. The nature of bilateral contracts is such that no one is permitted, without the consent of the other party, to renounce the obligation established, ibid. And this is all the more true when the other party has already fulfilled his own obligation; according to rule 75 ff.

[*Latin ed. p. 622*]

622 INDEX GENERALIS: Nemo potest mutare suum consilium. Conceditur perpetuum absentiae indultum, ibid. In alterius iniuriam, ibid. Obligatio quae naturam induit donationis irrevocabilis inter vivos, neque per testamentum rite factum, a testatore sui compote, destrui potest, ibid. Onera beneficiorum esse omnino implenda a beneficiato nemo ambigit; praecipue si per stipulationem specialem sibi eadem imposuit; nam quod semel placuit amplius displicere non debet. pag. 291. Parochus quoad residentiam: Parochorum munus, quoad animas illis concreditas, ex praecepto. Pensio Ecclesiastica: Pensiones constituuntur quoties subsit iusta et légitima causa: ut puta ob insigne clerici in Ecclesiam meritum, excellentem virtutem, summam doctrinae peritiam, senectutem, aegritudinem, vel aliam piam causam, pag. 202. Pensiones, praecipue quoad paroecias, tum ex Tridentino, tum ex Decreto Cum nuperrimis ita imponendae sunt, ut salva maneat parocho congrua 100 scutatorum. pag. 438. Non potest, nisi ab eo qui gregi suo: Si pensio superet tertiam redituum partem, iusta non invigilat, assistit, neque eum un- censebitur, ibid. Divino promanans, rite adimpleri quam deserit: monentur enim a Tridentino et exorantur animarum pastores, ut divinorum praeceptorum memores, factique forma gregis in iudicio et veritate pascant et regant, pag. 156. Permutatio Paroeciarum: Ex Tridentino Sess. 24 cap. 18 vacantes paroeciales Ecclesiae donari nequeunt pastore, nisi per concitum pro

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rata temporis absentiae, cursum; ita ut alias provisiones seu institutiones, praeter supradictam formam, factae, subreptitiae esse censeantur, et ipso iure usque pro infectis haberi debent, non servata forma concursus, pag. 462. Huius praecepti rigor haud moderatur in praxi ab Apostolica Sede: Hinc etiam Romae parochus qui translocandus sit ad aliam paroeciam, neque quoad pastorem, quem mala per concursum evincere debet sese plebs odit; nam dum eidem vigore praeditum esse requisitis pro nova supremae potestatis, et ex gravissimis causis renovatur abessendi facultas de anno in annum, numquam communi derogans, ibid.

[*Latin ed. p. 623*]

INDEX GENERALIS 623, concerning common sanctions: Regarding these matters, Bishops are burdened with knowledge: that a parish priest, whom the local people detest, may be granted a temporary dispensation to remain in another place, until it is ascertained with all due diligence that the parish priest cannot safely reside there, and that animosities are likely to persist; thus, the faculty to resign may be granted to him, ibid. The religious profession must always be accompanied by a legitimate reason for its dispensation, as stated in the approved regulations, page 398, especially concerning the care of souls, which, if admitted, is approved, if the offering and will cannot be, ibid. For, it is in approved religious orders that dispensations and the fulfillment of obligations are made, ibid. The restitution of benefits in full is not granted unless a recurring circumstance demonstrates the injustice of the matter; which can be done by showing that the document was based on false grounds, or that new and decisive evidence has emerged, or that a law has been overlooked or violated, page 75. The restitution in full is granted whenever it can be demonstrated that the law has been disregarded or violated, or that documents or testimonies upon which the judgment is based are subject to suspicion of falsity, page 582. Furthermore, for the validity of a profession, it is required that the acceptance of the vows be canonically fulfilled, ibid. The faculty of dismissing parish priests is usually granted by the Holy Council before allowing parish priests to leave their parishes; thus, even if animosities constitute a legitimate reason for dismissal, it must be proven that they are true, serious, and without the fault of the parish priest, and that they have existed before the Church has intervened, p. 262. A judgment expressed explicitly against the rigor of the law, and against laws or canons, has no force, ibid.

[*Latin ed. p. 624*]

-624 INDEX: A matter already judged, in no way, is subject to the General [Court]; by common law, two judgments, if conforming, can render the judgment already pronounced ineffective; and it can even be recalled after ten days: thus, those appealing are not to be heard, unless it is established

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that there is a nullity, or that the matter is infected. For that which is done contrary to the law produces no effect, and must be considered infected, ibid.; and for the injustice of a matter already judged, which are held as causes for restitution in integrum, page 582.

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